

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS	)	
SHE IS THE ADMINISTRATRIX OF THE	)	
ESTATE OF AWILDA SANTIAGO, ESSEX	)	
PROBATE COURT DOCKET #03P-2499AD1,	)	
P/P/A VERONICA ROSARIO AND	)	
CHRISTINA SANTIAGO, AND AS	)	
SHE IS THE ADMINISTRATRIX OF THE	)	
ESTATE OF JOSE SANTIAGO, BERLIN	)	Civil Action #05-CV-10617MLW
(CONNECTICUT)	)	
PROBATE COURT, CASE #03-0713	)	
<u>Plaintiff</u>	)	
	)	
v.	)	
	)	
RARE HOSPITALITY INTERNATIONAL, INC.	)	
d/b/a LONGHORN STEAKHOUSE	)	
<u>Defendant</u>	)	

**AFFIDAVIT OF ALBERT L. FARRAH, JR.**

1. My name is Albert L. Farrah, Jr. at all times pertinent hereto, I have been counsel to the plaintiffs in the above matter.

2. Attached hereto are copies of the following documents:

- A. Handwritten statement of Jude Connelly dated November 3, 2003;
- B. Deposition of Jude Connelly dated August 19, 2004 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;
- C. Deposition of Jude Connelly in this action dated February 10, 2006;
- D. Handwritten statement of Leigh Chabot dated November 2, 2003;
- E. Portions of the deposition of Leigh Chabot in this action dated March 10, 2006;
- F. Portions of the deposition of Thomas Espey dated June 22, 2004 in the

matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;

G. Portions of the deposition of Michael Espey dated June 22, 2004 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2;

H. Portions of the deposition of Kristen O'Donnell in this action dated December 28, 2005;

I. Portions of the Longhorn Steakhouse Bar Recipes, Revised 2002;

J. Longhorn Steakhouse Audit Report dated September 26, 2003;

K. Affidavit of Jude Connelly dated May 6, 2005 in the matter of Nancy Rosario, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704L2; and

3. Attached hereto as Tab L is various correspondence between my office and that of RARE's attorney regarding the deposition of John DiNatale. From the outset, Mr. Gillis made it clear to me that he would not produce Mr. DiNatale for deposition and as the attached correspondence shows, we agreed early on that he would file a motion for protective order.

4. I do not believe, given the obvious effect John DiNatale had on Jude Connelly's testimony, that there was any obligation on my part to specify why I believed I was entitled to take Mr. DiNatale's deposition, particularly since Mr. Gillis made it plain he was not going to produce Mr. DiNatale. Nevertheless, I regret the use of the expression "take a shot at" Mr. DiNatale.

5. The reasons supporting plaintiff's claim she has a right to depose Mr. DiNatale are fully set in the accompanying memorandum.

Signed under the pains and penalties of perjury this 15<sup>th</sup> day of August, 2006.



ALBERT L. FARRAH, JR., ESQ.

CERTIFICATE OF SERVICE

SUFFOLK, SS

August 15, 2006

A copy of the Affidavit of Albert L. Farrah, Jr. was today mailed, postage prepaid to Michael Gillis, Esq., Gillis & Bikofsky, P.C., 1150 Walnut Street, Newton Highlands, MA 02461.



Albert L. Farrah, Jr., Esq.

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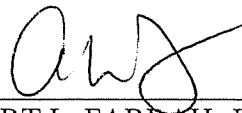
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Albert L. Farrah, Jr., Esq.

GRAND JURY  
EXHIBIT

18

11/5/03 RC

Jude Connelly - Jude Connelly

DOB - 3/23/85

521-63-8137

Nov. 2<sup>nd</sup>, 2003

3:25 pm

We were dirtbiking in Templeton, Ma at the sandpits. When it got dark, we left templeton. Scott espy drove from templeton to the Long Horn restaurant in Leominster, Ma. ~~the~~ We arrived there around 8:30. We waited for a table and around 9:00 pm we were seated. ~~the~~ We had dinner. Jeff had a couple beers (maybe 2) and maybe 3 drinks with Jack Daniels with dinner. At around 11:00 pm when the restaurant was closing we left. We went from the long horn to the Four seasons hotel I believe (over RMV in Fitchburg). We stayed there for maybe 15-20 min. Scott ~~was~~ drove from the longhorn to the hotel and then to the other side. ~~the~~ Scott, Jeff and I dropped one of the others off at the long horn with the others. Then Scott drove Jeff and I with the 2 dogs to Pond view Apartment homes in Littleton, Ma by the 495 exit. <sup>at pond</sup> We unloaded our stuff (me, Scott) and Jeff left with the 2 dogs. We realized we did not have the keys so we called Jeff. I got through to him and he said that he would turn around to bring us the keys. We waited maybe 15-20 min and Jeff ~~had not~~ shown up. We called him again and got through. He said he was all right, but he was in an ~~accident~~ accident and to come get him. We had to break a window out in Scott's truck to get

on the south side. We turned around in Westford  
and headed south. We saw lots of police cars and  
ambulance vehicles, we could not see anything that looked  
like Jeff's truck. We could not see any vehicles off  
the road. We decided not to stop and we then we  
back to Harvard where I was dropped off.

*just barely*

1 INDEX 3

2

3 WITNESS: DIRECT CROSS

4 JUDE P. CONELLY

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6 By Mr. Farrah 4

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8 By Mr. Lane 94

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11 EXHIBITS

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13 NO. DESCRIPTION PAGE

14 1 LongHorn Steakhouse Proposed

15 Floor Plan 32

16 2 Photocopy of Guest Pass to

17 The Other Side 92

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19

20

21

22 Exhibits retained by Attorney Farrah.

23

24

4

1 PROCEEDINGS  
2 STIPULATIONS  
3 It is hereby stipulated and agreed by  
4 and between counsel for the respective parties  
5 that the witness will read and sign the  
6 deposition transcript within 30 days. The  
7 notarization of the signature and filing of the  
8 deposition may be waived.  
9 It is further stipulated that all  
10 objections, except as to the form of the  
11 question, and motions to strike will be  
12 reserved until the time of trial.  
13 JUDE P. CONELLY,  
14 a witness called for examination by counsel for  
15 the Plaintiff, having been satisfactorily  
16 identified and duly sworn, was examined and  
17 testified as follows:  
18 DIRECT EXAMINATION  
19 BY MR. FARRAH:  
20 Q. Tell us your full name for the  
21 record.  
22 A. Jude Patrick Connelly.  
23 Q. My name is Albert Farrah, and I  
24 represent Nancy Rosario, who has brought suit



5

7

1 in her own name and as administratrix of her  
2 daughter's estate against Jeffrey Southworth  
3 and Enterprise Rent-a-Car of Boston.

4 And I'm going to be asking you some  
5 questions, and Mr. Sullivan and Mr. Lane may  
6 ask you some questions as well. If you don't  
7 understand any questions that I ask or they  
8 ask, please let me know, and I'll try to  
9 rephrase it. If you need a break, let me know,  
10 and you can have a break.

11 At the end of the deposition, the  
12 transcript of your testimony, which is what is  
13 happening right now, will be sent to you, and  
14 you'll have 30 days to review it for accuracy.  
15 And to the extent there are any, make a list of  
16 inaccuracies on a sheet of paper, sign that  
17 sheet, and send it back.

18 If we don't get it back from you  
19 within 30 days, we're going to, for the  
20 purposes of this lawsuit, deem that the  
21 transcript was satisfactory to you and then use  
22 it for whatever purposes transcripts are used  
23 for in lawsuits. Is that all okay for you?

24 A. Yeah.

1 Q. And where did you go to school?

2 A. I go to school -- actually, I'm in  
3 between schools right now, I used to go to  
4 UMass Lowell. Now I'm transferring to Mount  
5 Wachusett.

6 Q. Mount Wachusett College?

7 A. Yes.

8 Q. Where is that?

9 A. It's in Gardner, Mass.

10 Q. Will you be boarding or a day  
11 student?

12 A. I'll be a day student.

13 Q. Have you completed enough credits to  
14 finish your freshman year?

15 A. Ah, I don't actually know. No, I  
16 don't think so. I think I'm a little bit  
17 short.

18 Q. Is it accurate to say that you  
19 attended UMass Lowell from September of 2003 to  
20 sometime in 2004?

21 A. Yes.

22 Q. And you graduated from Harvard High  
23 School; is that right?

24 A. Yeah. It's actually called The

6

8

1 Q. Great. All right. Where do you  
2 live?

3 A. Harvard, Mass.

4 Q. What is your address?

5 A. 15 Lovers Lane.

6 Q. And how old are you?

7 A. 19.

8 Q. Your date of birth is what?

9 A. 3/23/85.

10 Q. Are you working or going to school  
11 right now?

12 A. Ah, I do both. I haven't started  
13 school.

14 Q. Where are you working right now?

15 A. In Fitchburg at Napa Auto Parts.

16 Q. Does Scott Espy work at Napa Auto  
17 Parts?

18 A. No.

19 Q. Does his brother work at Napa Auto  
20 Parts?

21 A. No.

22 Q. How long have you worked there?

23 A. I've worked there probably three  
24 months.

1 Bromfield School.

2 Q. What year did you graduate from The  
3 Bromfield School?

4 A. 2003.

5 Q. Okay. For how long have you known  
6 Jeffrey Southworth?

7 A. Ah, known him about two years maybe.

8 Q. Okay. So that would bring us back to  
9 summer of 2002, more or less; is that right?

10 A. Yes.

11 Q. You didn't know him prior to that, as  
12 best as you can recall?

13 A. No, I didn't. I mean, I'd heard of  
14 him, but I never really met him.

15 Q. What had you heard of him before you  
16 met him?

17 A. Well, I just heard he used to go to  
18 our school, and he lived in Harvard for some  
19 time, and then he moved out.

20 Q. Your school is The Bromfield School?

21 A. Yes.

22 Q. Did you hear before you met him that  
23 he had been expelled from The Bromfield School?

24 A. No.

9

1 Q. Did you subsequently come to learn  
2 that he had been expelled from The Bromfield  
3 School?

4 A. No.

5 Q. Okay. Do you recall the  
6 circumstances of your first meeting with  
7 Jeffrey Southworth?

8 A. Not really. I mean, I can tell you  
9 that it's most likely we were going  
10 dirt-biking. I was going dirt-biking, and he  
11 was there.

12 Q. Okay. You're pretty clear that the  
13 first meeting had something to do with  
14 dirt-biking; is that right?

15 A. Yeah. Well, I think the first time  
16 that I was actually with him, just me and him,  
17 you know, he called me up and asked me if I  
18 wanted to go dirt-biking.

19 Q. But prior to that time, you had been  
20 in a place where there was dirt-biking going on  
21 and he was there as well as you and others; is  
22 that right?

23 A. Yes.

24 Q. And approximately from the time that

10

1 you first saw him dirt-biking until September  
2 26, 2003, on how many occasions were you either  
3 alone or in the company of others dirt-biking  
4 with Jeffrey Southworth?

5 A. I would say, you know, 15 times.

6 Q. Okay. And where would that  
7 dirt-biking happen? What locations?

8 A. Well, there is a few different  
9 places. Down in Uxbridge, Massachusetts --  
10 well, it's closed now, but there was an -- it's  
11 called Uxbridge Motor Sports Park. Just a guy  
12 ran a little track. You pay \$20 and ride for  
13 the day.

14 Then there is a sandpit out in  
15 Templeton, Mass. that we went to a lot. There  
16 was a -- now it's owned by the Marshalls, the  
17 Marshalls from Stow, Mass. But we did a lot of  
18 riding there. Those are the two spots that we  
19 rode.

20 Q. Any place else that you can think of  
21 that you rode with Jeff Southworth?

22 A. We went other places, but we didn't  
23 ride there. We went to actual dirt-bike races,  
24 Southwick, Mass., Winchester Speed Park. It

11

1 wasn't very often.

2 Q. In addition to being in his company  
3 and involved in dirt-biking activities, either  
4 dirt-biking yourselves or going to dirt-bike  
5 races as you just testified, were you in his  
6 company in any other settings?

7 A. Very rarely. I mean, I was, but you  
8 know, it was sort of, you know, I'd go to a  
9 party, and he'd be there, and I'd see him. And  
10 it wasn't like I was hanging out with him, but  
11 he was there.

12 Q. Okay. And can you tell me where some  
13 of the parties were that you saw him?

14 A. They were in Harvard. There weren't  
15 very many of them. I just remember seeing him  
16 at a few parties around town.

17 Q. This would have been sometime between  
18 the summer of 2002 and September of 2003; is  
19 that right?

20 A. Yes. Yeah. Actually, I think it was  
21 the summer of 2003.

22 Q. That you saw him at the parties?

23 A. Yeah, yes.

24 Q. Do you remember the names of any of

12

1 the houses that you were at for parties?

2 A. There was -- we were at one party. I  
3 think it was -- the name was Vanecola, Dave  
4 or -- yeah, Dave Vanecola.

5 Q. Vanecola?

6 A. Yeah. I'm not exactly sure on the  
7 spelling.

8 Q. What street was that on in Harvard?

9 A. I couldn't tell you. I know how to  
10 get there. I just don't know the street name.

11 Q. Any other parties that you remember  
12 seeing him at in the summer of 2003?

13 A. Not that I can, you know, like, know  
14 for a fact.

15 Q. During the fall of 2003, did you have  
16 your own dirt bike?

17 A. Fall of -- no, I don't think -- No, I  
18 didn't.

19 Q. So when you dirt-biked during the  
20 summer of 2002 to fall of 2003 time frame,  
21 whose dirt bike or bikes did you use?

22 A. I used -- my brother has a few bikes.  
23 I used one of his. And, actually, now it's  
24 mine.

<p>13</p> <p>1 Q. Good brother. Okay. Did you ever 2 use Jeffrey Southworth's dirt bikes at all? 3 A. I mean, I've ridden on them, but I 4 never really rode them that much. 5 Q. You said he called you up to 6 dirt-bike? 7 A. Mm-hmm. 8 Q. On more than one occasion? 9 A. Yes. 10 Q. And he would call you on your cell 11 phone? 12 A. Yes. 13 Q. What is that number? 14 A. 978-239-6954. 15 Q. That was your number back in 16 September of 2003; is that right? 17 A. And still is. 18 Q. Okay. Before I get to that, did he 19 ever ask you to drive his motor vehicle while 20 you were in Massachusetts? 21 A. Yes. 22 Q. When is the first time he asked you 23 to drive his motor vehicle? 24 A. Ah, it was, you know, I can say for a</p>	<p>15</p> <p>1 A. No, no. 2 Q. He wasn't in any disguises or 3 anything like that, was he? 4 A. No. 5 Q. Did he ever tell you, other than he 6 didn't want to be seen in Harvard, why he 7 wanted you to drive his car or his motor 8 vehicle? 9 A. No. He never really mentioned 10 anything. I mean, he had other people drive it 11 as well, you know, whoever was there. Whether 12 it be Scott Espy or, you know, whoever we were 13 dirt-biking with. 14 Q. Round numbers again, your best 15 estimate, how many times were you dirt-biking 16 with Scott Espy and Jeff Southworth up through 17 September 26, 2003? 18 A. I would -- I definitely dirt-biked 19 with Jeff probably 15 times. Whether Scott was 20 there -- he was probably there ten of the 21 times. 22 Q. Did you ever, prior to September 26, 23 2003, drive Jeff Southworth's motor vehicle 24 because he was too drunk to drive?</p>
<p>14</p> <p>1 fact that it was definitely when we were going 2 dirt-biking. I just can't tell you exactly 3 when. 4 Q. Did he tell you that time why he 5 wanted you to drive his motor vehicle? 6 A. No. He just said that he didn't want 7 the cops seeing, you know, us. He didn't 8 really say anything specific. I know that he 9 didn't want the cops seeing him in Harvard. 10 I don't know why. At that time, I 11 wasn't sure, you know, I wasn't -- now I 12 realize that he didn't have his license. But 13 at that time, you know, he got -- a lot of 14 people in Harvard sort of have -- don't really 15 like him. 16 Q. Like him? 17 A. Yes. And this is also stuff that 18 I've learned from his past, like when he got, I 19 guess, expelled from Bromfield School. So you 20 know, he just didn't really like to be seen in 21 Harvard. 22 Q. Okay. So when you were driving him 23 through the streets of Harvard, was he ducking 24 down in the truck?</p>	<p>16</p> <p>1 A. No. Wait, prior to 2003? 2 Q. Prior to September 26, 2003 -- 3 A. Oh, no, no, no. 4 Q. -- did you ever drive because he was 5 too drunk? 6 A. No. 7 Q. Okay. On September 26, 2003, which 8 is -- I don't know if I've got the date right. 9 I think I do. Give my one second -- yeah, 10 which is the date that you were at the LongHorn 11 Steakhouse with him. 12 A. Okay. 13 Q. By the way, other than that day, 14 September 26, 2003, did you ever go to the 15 LongHorn with Jeff Southworth? 16 A. No. 17 Q. Did you ever go to any restaurant 18 with Jeff Southworth prior to September 26, 19 2003 after dirt-biking? 20 A. No. 21 Q. Okay. And you live at home with your 22 parents? 23 A. Yes. 24 Q. So on that day, the LongHorn</p>



<p>17</p> <p>1 Steakhouse day -- which I'm sure you remember?</p> <p>2 A. Yup.</p> <p>3 Q. What time did you first meet up with</p> <p>4 him?</p> <p>5 A. Well, we met up with him -- I met up</p> <p>6 with him earlier on in the afternoon because we</p> <p>7 were going dirt-biking out in Templeton, that</p> <p>8 sandpit.</p> <p>9 Q. So give me an idea. What time was</p> <p>10 it?</p> <p>11 A. It was probably, you know, early</p> <p>12 afternoon. Two, maybe three.</p> <p>13 Q. And were you working then?</p> <p>14 A. No, I wasn't.</p> <p>15 Q. Were you in school then?</p> <p>16 A. Yes.</p> <p>17 Q. At UMass Lowell?</p> <p>18 A. Yes.</p> <p>19 Q. And you were a day student there?</p> <p>20 A. Yes, full-time.</p> <p>21 Q. School had started by September 26,</p> <p>22 2003, hadn't it?</p> <p>23 A. Yes, mm-hmm.</p> <p>24 Q. But you were not at school that</p>	<p>19</p> <p>1 didn't. They came out -- they probably -- if I</p> <p>2 had to time when they got there, you know, it</p> <p>3 would probably be around five o'clock.</p> <p>4 Q. But you had gone out with your</p> <p>5 brother earlier?</p> <p>6 A. Yes.</p> <p>7 Q. What is his name?</p> <p>8 A. Dylan.</p> <p>9 Q. D-Y?</p> <p>10 A. L-A-N, yes. Conelly.</p> <p>11 Q. Okay. You said the Marshalls now own</p> <p>12 the Templeton sandpit; is that right?</p> <p>13 A. Well, a portion of them, I think.</p> <p>14 Well, the rest of it is owned by the Town, but</p> <p>15 I'm not positive.</p> <p>16 Q. Give me an idea of how many other</p> <p>17 people were out dirt-biking that day at that</p> <p>18 sandpit when you met up with Southworth?</p> <p>19 A. I know for a fact that it was us</p> <p>20 four: my brother, myself, Jeff, and Scott. I</p> <p>21 don't remember anyone else. But, you know,</p> <p>22 it's a sandpit that a lot of people go to,</p> <p>23 especially on the weekends. But I don't think</p> <p>24 it was a weekend. So I don't recall anyone</p>
<p>18</p> <p>1 afternoon; is that right?</p> <p>2 A. Yeah.</p> <p>3 Q. Do you know how it was that -- what</p> <p>4 the arrangement was that lead the two of you to</p> <p>5 go dirt-biking that day, September 26?</p> <p>6 A. Ah, well, you know, it was a thing we</p> <p>7 did, you know, every week or so. You know, a</p> <p>8 couple times a week we'd go riding. That was</p> <p>9 one particular day that we decided to do it.</p> <p>10 Q. You don't remember who called whom?</p> <p>11 A. Oh, no. He probably called me.</p> <p>12 That's what usually happened. But I can't</p> <p>13 really recall.</p> <p>14 Q. And how did you get to the sandpit in</p> <p>15 Templeton that day?</p> <p>16 A. I actually met up with him. He</p> <p>17 was -- actually, I went out there and met -- I</p> <p>18 was with my brother earlier. We were riding.</p> <p>19 Now I'm starting to remember a little more. I</p> <p>20 was out there earlier on with my brother</p> <p>21 dirt-biking.</p> <p>22 And we had been in contact with Jeff</p> <p>23 and Scott. They were together, and they were</p> <p>24 going to meet us out there. And then they</p>	<p>20</p> <p>1 else.</p> <p>2 Q. You don't recall seeing anyone else?</p> <p>3 A. No. Might be an occasional</p> <p>4 dirt-biker that came by, but I don't, you know,</p> <p>5 specifically remember.</p> <p>6 Q. Is this a sandpit that has no trees</p> <p>7 on it?</p> <p>8 A. Ah, well, it's actually -- it's a</p> <p>9 couple of sandpits. You know, there is trails</p> <p>10 that go from one to the other. But they are</p> <p>11 very close. They maybe have a little section</p> <p>12 of trees or a tree line in between them. It's</p> <p>13 not very -- it's not like a forest or anything.</p> <p>14 It just...</p> <p>15 Q. Most of the dirt-biking goes on in</p> <p>16 the sandpits themselves as opposed to in the</p> <p>17 trees?</p> <p>18 A. Yes.</p> <p>19 Q. So you would be able to see most of</p> <p>20 the other people who were dirt-biking there?</p> <p>21 A. Oh, yeah.</p> <p>22 Q. While you were dirt-biking with Jeff,</p> <p>23 and Scott, did anybody have anything to drink,</p> <p>24 alcoholic or nonalcoholic beverages?</p>

21

1 A. I don't -- no. I mean, we were  
2 always out there when we were -- at least what  
3 I went out there to do, I don't recall any  
4 drinking. We went out there because, you  
5 know -- this year I started racing dirt bikes.  
6 And we were actually out there training.  
7 So I definitely wasn't. I don't  
8 remember them either, you know, they were doing  
9 the same thing. They were training. Scott  
10 wasn't racing, but he was, you know, he was out  
11 there, you know, riding with us.  
12 Q. Okay. What time did you leave the  
13 sandpit?  
14 A. It was, you know, shortly after it  
15 got dark. Maybe eight, eight o'clock, say,  
16 late, 7:30 maybe.  
17 Q. Before you all left the sandpit, but  
18 after you were done dirt-biking --  
19 A. Mm-hmm.  
20 Q. -- did you see Jeff have a beer?  
21 A. No.  
22 Q. Have you heard from anybody that  
23 before you all left the sandpit but after you  
24 were done dirt-biking that day Jeff had a beer?

22

1 A. No.  
2 Q. Where did you go from the sandpit  
3 next, or where did you next go from the  
4 sandpit?  
5 A. We got on the highway and went to --  
6 we were going to head to Harvard, and then we  
7 decided to go to the LongHorn and get dinner.  
8 Q. All right. And you were riding with  
9 whom at that time?  
10 A. I was with -- at that time, my  
11 brother actually left. He lived out in western  
12 Mass., goes to school out in Amherst. He left  
13 earlier on, and he took my bike, because I  
14 don't have a truck. So, and I was with Scott  
15 and Jeff. And we went back. I was with them.  
16 Q. So your brother left. Did he leave  
17 at the same time you all left the sandpit, or  
18 did he leave earlier?  
19 A. It was right at the same time. I  
20 mean, not like -- we didn't follow him out.  
21 But, you know, we finished dirt-biking; then he  
22 left.  
23 Q. All right. How long, approximately,  
24 did it take to get from Templeton to the

23

1 LongHorn?  
2 A. Twenty-five minutes, half an hour.  
3 Q. Do you know what route you drove?  
4 A. Yes. We took Route 2.  
5 Q. Route 2?  
6 A. Yup.  
7 Q. And Scott drove; is that right?  
8 A. Yes.  
9 Q. Jeff was sitting in the front with  
10 Scott; is that right?  
11 A. Yes.  
12 Q. You were sitting in the back?  
13 A. Mm-hmm.  
14 Q. Okay. Did Jeff have anything to  
15 drink on that trip?  
16 A. Ah, you mean in the car?  
17 Q. Yes.  
18 A. No.  
19 Q. Are you sure?  
20 A. At least I didn't see him drink  
21 anything.  
22 Q. Did you see a cooler in the car?  
23 A. No.  
24 Q. So am I correct that you can't recall

24

1 whether anybody had anything at all to drink  
2 from five o'clock in until 7:30 or eight  
3 o'clock when you all left the pit?  
4 A. Yeah, yes.  
5 Q. I'm talking water, Coke?  
6 A. Oh, we always -- we bring lots of  
7 water. We drink water just to hydrate  
8 ourselves. But...  
9 Q. Where was the water that you were  
10 drinking that day while you were at the pit?  
11 A. I mean, we usually leave it either  
12 in, you know, the back, in the bed of the truck  
13 or right inside the truck or, you know, right  
14 by the truck somewhere.  
15 Q. In a cooler?  
16 A. No. We just grab a gallon jug on the  
17 way out. There's a gas station.  
18 Q. Do you remember having a gallon jug  
19 that day?  
20 A. I don't remember it, but I most  
21 likely did.  
22 Q. Okay. And do you know whether Jeff  
23 and Scott had any water or other nonalcoholic  
24 beverages that they were drinking?

25

27

1 A. Well, I can be almost -- pretty  
2 positive they did. You know, because that's  
3 what we always -- we always had lots of water  
4 with us.

5 Q. Do you know where they kept their  
6 water?

7 A. I mean, right near the truck.

8 Q. Do you have a memory of seeing it  
9 that day, September 26?

10 A. Ah, no, I don't. I mean, I know we  
11 had a lot of water. Jeff and Scott actually, a  
12 few times when we were dirt-biking, they'd  
13 bring an extra gallon or so and just douse  
14 themselves down, take a shower almost, after we  
15 were done. But it was a little bit cold, I  
16 think.

17 Q. That day?

18 A. Getting colder, you know. It was  
19 late September. I don't think they were doing  
20 that.

21 Q. So approximately what time did you  
22 get to the LongHorn Steakhouse?

23 A. Maybe 8:30, 8:45, you know.

24 Q. Did you wear a watch that day, do you

1 brother Michael?

2 A. Yes, I knew him.

3 Q. But he's a little older than you;  
4 isn't that right?

5 A. Yeah, yeah.

6 Q. In fact, all of these --

7 A. They're all older.

8 Q. -- guys are all older than you?

9 A. Mm-hmm.

10 Q. Is it accurate to say that you knew  
11 Scott from dirt-biking?

12 A. Well --

13 Q. And not otherwise?

14 A. Well, I knew him from dirt-biking.

15 But I knew him really from high school, you  
16 know, playing soccer. We played on the soccer  
17 team, and he also went to UMass Lowell.

18 Q. Okay. The phone calls to Michael,  
19 were they made from inside the LongHorn?

20 A. Yeah, I think they were.

21 Q. And did your group, this is just the  
22 three of you now, go to the bar at some point  
23 in time at the LongHorn?

24 A. We were waiting at the bar for our --

26

28

1 know?

2 A. No.

3 Q. Between leaving the pit and getting  
4 to the LongHorn Steakhouse, did anybody in your  
5 party make any attempt to hook up with, get  
6 together with, other people that night?

7 A. Yeah. Actually, well, it wasn't in  
8 the car ride. It was actually once we got to  
9 the --

10 Q. LongHorn?

11 A. -- LongHorn.

12 Q. What happened?

13 A. Well, we went in. We found out there  
14 was a short wait. So I can't recall exactly.  
15 It might have been either Scott calling his  
16 brother or, you know, Jeff calling Scott's  
17 brother, or someone calling someone with  
18 Scott's brother. But somehow we did get in  
19 touch with Scott's brother, Michael Espy, and  
20 the kids that he was with.

21 Q. Okay. As far as you know, you didn't  
22 initiate those calls; is that right?

23 A. Yes, no.

24 Q. Because -- did you know Scott's

1 for the 15, 20 minutes that it took for their  
2 table to be cleared.

3 Q. And during that time, the 15 to 20  
4 minutes it took for the table to be cleared,  
5 did you see Jeff Southworth drinking at all?

6 A. Yes.

7 Q. What did you see him drinking?

8 A. He had a beer.

9 Q. And do you know whether it was from a  
10 bottle or a mug?

11 A. I -- yeah, it was from a mug, I'm  
12 pretty sure. Yes.

13 Q. And what did you have to drink at the  
14 bar?

15 A. Coke. I honestly couldn't remember.  
16 I know that it wasn't alcoholic.

17 Q. Do you know what Scott had to drink  
18 at the bar?

19 A. He had the same, you know. He just  
20 ordered a beer. It was the same thing Jeff  
21 had, a mug, glass.

22 Q. Do you know whether or not Jeff had  
23 more than one beer while he was at the bar?

24 A. You know, I think he did. I'm not --

29

31

1 I don't know for a fact, but, you know, he  
 2 probably did.  
 3 Q. Same kind of beer, a mug?  
 4 A. Yes.  
 5 Q. Is that right?  
 6 A. Yeah.  
 7 Q. Big mug?  
 8 A. I mean, I don't really -- you know,  
 9 the normal glass that you'd get in a  
 10 restaurant.  
 11 Q. Let me ask you this. After you sat  
 12 at the table, did you see Jeff have more beer?  
 13 A. You mean once we got to our seat?  
 14 Q. At the table as opposed to the bar?  
 15 A. Yes.  
 16 Q. After you sat at the table, did you  
 17 see Jeff have more beer?  
 18 A. Yes.  
 19 Q. And was the vessel, okay, in which  
 20 that beer was delivered to him at the table the  
 21 same as the vessel in which he received the  
 22 beer or more beer -- more than one beer at the  
 23 bar?  
 24 A. Yes, it was.

30

1 Q. Same mug?  
 2 A. Yes. Well, not the exact same.  
 3 Q. Same size?  
 4 A. The same, same, same cup. Same size,  
 5 yeah.  
 6 Q. Do you remember any of the  
 7 conversation at the bar?  
 8 A. Not really. Um, I remember we were  
 9 waiting for -- we were really just sitting  
 10 there waiting for Mike and Todd Currie, who was  
 11 with him, and two other kids. I think they  
 12 were from out of state. I'd never met them  
 13 before. That was the first time I met them.  
 14 I'm not sure of their names.  
 15 Q. By the way, I just want to sort of  
 16 ask the question one more way. Is it your best  
 17 memory as you sit here now that while he was at  
 18 the bar, Jeff Southworth had more than one  
 19 beer?  
 20 A. I'd say so, yes.  
 21 Q. You were at the bar you think for 15  
 22 to 20 minutes before you were seated at the  
 23 table; is that right?  
 24 A. Yeah.

1 Q. Do you know who served Jeff at the  
 2 bar?  
 3 A. I mean, the bartender. I remember it  
 4 was a girl.  
 5 Q. Woman. Woman.  
 6 A. Yes. I don't specifically remember.  
 7 I think she had blond hair. I just remember  
 8 seeing blond hair.  
 9 Q. While you all were in the bar area,  
 10 were you seated at the bar?  
 11 A. No.  
 12 Q. Were you standing at the bar?  
 13 A. Yes, I was.  
 14 Q. Okay. Was Jeff standing at the bar  
 15 as well?  
 16 A. Yes. I think we were all standing  
 17 there, and then a seat opened up, and one of  
 18 them took it. But, I mean, we were really just  
 19 standing there next to the bar.  
 20 Q. Okay. I'm going to show you a sheet  
 21 of paper that I got from the Licensing  
 22 Commission of the City of Leominster.  
 23 A. Okay.  
 24 Q. It's entitled Proposed Floor Plan

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1 Leominster, Mass., LongHorn Steakhouse. I'm  
 2 going to ask you to look at this for a moment  
 3 or two and see if you can familiarize yourself  
 4 with the piece of paper, and then tell me --  
 5 the question I want you to answer is, Does the  
 6 piece of paper fairly and accurately depict the  
 7 layout, looking down from above, of the  
 8 LongHorn Steakhouse as it appeared to you the  
 9 night of September 26, 2003, okay?  
 10 (Pause.)  
 11 A. Yes, it does.  
 12 MR. FARRAH: Can we have that marked  
 13 as the first exhibit.  
 14 (Exhibit No. 1 marked for  
 15 identification.)  
 16 Q. So can you point to the bar area on  
 17 Exhibit 1 for me?  
 18 A. It's right here (indicating).  
 19 Q. And can you point to where your  
 20 group, Southworth, Scott, and you, were  
 21 standing at the bar when you first got to the  
 22 bar?  
 23 A. Right in this corner (indicating).  
 24 Q. Okay. So can you let me get a red



33

1 pen. Okay, I have a blue pen. This is good.  
2 Can you just circle the area where the three of  
3 you were first standing for me?  
4 (Witness complies.)  
5 Q. And then will you put a 3 here and  
6 then just make an arrow into that circle for  
7 me?  
8 (Witness complies.)  
9 Q. Thanks. And do you have any memory  
10 as you sit here now of where the seat that  
11 opened up was?  
12 A. Yes.  
13 Q. Great. Tell me where that was. Just  
14 point to it.  
15 A. Right there. I think -- I don't -- I  
16 don't think there were four tables. I think  
17 there was actually a big table.  
18 Q. Okay. That's --  
19 A. That's where we were sitting.  
20 Q. Before we go there, I just want to  
21 get you to tell me, if you remember, where the  
22 seat at the bar that you testified earlier  
23 opened up and someone sat; can you point to it  
24 for me first?

34

1 (Witness complies.)  
2 Q. That's actually the little circle,  
3 presumably depicting a seat, that's closest to  
4 the point of the arrow that you made; is that  
5 right?  
6 A. Yeah.  
7 Q. You were joined by others that night?  
8 Your group was joined by others that night?  
9 A. Mm-hmm.  
10 Q. Did that happen while the three of  
11 you were still in the bar area?  
12 A. No. We were actually -- it was just  
13 as we were being seated.  
14 Q. Okay. Did Scott, while he was at the  
15 bar, have more than one beer, to the best of  
16 your knowledge?  
17 A. I would say that he did, yes.  
18 Q. That night, throughout that night,  
19 from when you got to the LongHorn Steakhouse  
20 until you last saw Jeffrey Southworth, did you  
21 have any alcoholic beverages at all to drink?  
22 A. No.  
23 Q. Who paid the bar tab?  
24 A. Well, I didn't -- Jeff paid for me.

35

1 But everyone else paid for themselves.  
2 Q. Am I correct that there was only  
3 Jeff, Scott, and you at the bar?  
4 A. Oh, yes. At the bar, yes.  
5 Q. So who paid the bar tab?  
6 A. You know what? I think he actually  
7 had the -- whatever the bill was, I think they  
8 just had it sent to our table and added it on  
9 to the end. I don't believe -- I don't  
10 remember anyone paying right at the bar. I may  
11 be mistaken on that, but I seem to remember  
12 that as being what happened.  
13 Q. You didn't pay the bar tab; is that  
14 right?  
15 A. Yeah. Well, actually, I didn't have  
16 any money or anything on me, so Jeff told me  
17 he'd buy me dinner.  
18 Q. Okay. As far as you know, the person  
19 serving Jeff at the -- serving all of you at the  
20 bar was a blond woman?  
21 A. I believe so.  
22 Q. Approximately how old?  
23 A. Early 20s. Maybe 20 -- well, maybe  
24 mid-20s, 25, you know, 26.

36

1 Q. And do you remember any conversation  
2 that anybody in your party had with her?  
3 A. With the bartender?  
4 Q. Yes.  
5 A. No, not really. I mean, other than  
6 ordering.  
7 Q. Did she seem to know Scott and Jeff?  
8 A. No, not -- I mean, I couldn't notice  
9 anything.  
10 Q. Okay. And it's your best memory that  
11 you were at the bar 15 to 20 minutes before you  
12 were seated; is that right?  
13 A. Mm-hmm.  
14 Q. While you were at the bar, were you  
15 most of the time no further than a few feet  
16 away from Jeff?  
17 A. Yeah, I'd say so.  
18 Q. Okay. Now, when you were seated at a  
19 table, can you just point to the area of the  
20 table?  
21 A. Right where these four tables were.  
22 Q. Okay. And is it your memory as you  
23 sit here today that there were four tables in  
24 that area, each table with four chairs around

1 it?

2 A. No. I actually -- I only remember  
3 our table being there and the booths around us.  
4 There's a few booths here, here, and on the  
5 side. But I only remember there being one  
6 table.

7 Q. Okay. And can you just draw in the  
8 shape of the table that you remember, in the  
9 area you remember it being in, on Exhibit 1 for  
10 me?

11 A. Sure.

12 Q. Thanks.

13 (Witness complies.)

14 Q. And why don't you just shade it in a  
15 little bit, so it shows up a little better,  
16 okay?

17 (Witness complies.)

18 Q. Am I correct that the person that  
19 served your group at the table was not the same  
20 person that served the three of you at the bar?

21 A. Yes. It was a different person.

22 Q. Okay. By the way, can you just  
23 circle the table, put an arrow pointing to it,  
24 and write the word "table" out here in the

1 A. I know that we were there until right  
2 as they -- pretty -- as they were closing.  
3 Maybe two hours, hour and -- close to two hours  
4 there.

5 Q. Let me ask you this. Did Jeff have  
6 some food while he was at the table?

7 A. Yes.

8 Q. What did he have; do you remember?

9 A. Um, kind of remember maybe having  
10 ribs? I know it was something beef.

11 Q. What makes you say that your group  
12 was there until just about closing?

13 A. Well, I kind of remember there not  
14 being a lot of people around, you know. The  
15 restaurant was sort of -- people emptying out.  
16 And, you know, they were starting to clean up a  
17 little bit, and there weren't very many cars  
18 out in the parking lot when we left.

19 Q. But can you tell me what time you  
20 left?

21 A. I would say that it was, if not just  
22 before, right around 11 o'clock.

23 Q. But you didn't wear a watch?

24 A. No, I didn't. I wasn't wearing a

1 margin, so we know what we're talking about?

2 A. Sure.

3 (Witness complies.)

4 Q. Okay. While you were at the table,  
5 did you see Jeff Southworth drinking any  
6 alcoholic beverages?

7 A. Yes.

8 Q. Did you see him drinking beers?

9 A. Yes.

10 Q. How many beers, to your best memory,  
11 did you see him drink at the table?

12 A. Maybe four, maybe.

13 Q. Okay. And while he was at the table,  
14 did you also see him drinking Manhattans?

15 A. Yes.

16 Q. And what is your best memory of the  
17 number of Manhattans you saw him drinking at  
18 the table?

19 A. Probably two. I know that he  
20 ordered, like, a round of them. I don't, you  
21 know, I don't really remember how many. I  
22 think, you know, I'd probably say two.

23 Q. Approximately how long was your group  
24 at the table?

1 watch.

2 Q. The beers that you saw Jeff drink at  
3 the table -- I think I've asked this already  
4 but -- were in the same size container as the  
5 beers you saw him drink at the bar; is that  
6 right?

7 A. Yes, they were.

8 Q. Did you see others drink at your  
9 table?

10 A. Yeah.

11 Q. Did you see Thomas Espy drink at your  
12 table?

13 A. Ah, is that Mike?

14 Q. Mike Espy, right.

15 A. Okay, yeah, all right.

16 Q. Mike?

17 A. Is that his first name?

18 Q. One of them is Thomas, and it's  
19 either Scott or Mike, but Thomas is the real  
20 name. I'm totally confused.

21 A. I'm pretty sure their father's name  
22 is Thomas. So it's probably Thomas Mike Espy.

23 Q. The one I'm talking about is the one  
24 that was not dirt-biking with you. Did you see

<p style="text-align: right;">41</p> <p>1 him drink --</p> <p>2 A. Yeah, I did.</p> <p>3 Q. -- at the table? What was he</p> <p>4 drinking?</p> <p>5 A. He had a beer, you know. He had, I</p> <p>6 don't know, maybe a couple of them. And he</p> <p>7 also had -- I know when they ordered a round of</p> <p>8 Manhattans, he had one.</p> <p>9 Q. Did he appear to be under the</p> <p>10 influence of alcohol to you? This is the</p> <p>11 non-dirt-biking Espy.</p> <p>12 A. I mean, I didn't really notice</p> <p>13 anything. You know, he wasn't, like, acting</p> <p>14 crazy or anything. Nothing noticeable.</p> <p>15 Q. This is Espy we're talking about?</p> <p>16 A. Yes, Mike.</p> <p>17 Q. Okay. Was there more than one</p> <p>18 waitress serving your table that night?</p> <p>19 A. Ah, I honestly couldn't tell you. I</p> <p>20 don't believe so, but there may have -- I mean,</p> <p>21 you know, there could have been someone who</p> <p>22 came over and dropped something off. And I</p> <p>23 guess I don't remember seeing two waitresses.</p> <p>24 Q. When you describe where you were</p>	<p style="text-align: right;">43</p> <p>1 A. I --</p> <p>2 Q. I'm sorry.</p> <p>3 A. I kind of remember now -- I don't</p> <p>4 know who it was, whether it was, you know, a</p> <p>5 manager or someone. It might have even been</p> <p>6 our waitress. I remember someone coming over</p> <p>7 and asking our table to be quiet, a little bit</p> <p>8 quieter, you know.</p> <p>9 Q. That was because the table was loud?</p> <p>10 A. Yes.</p> <p>11 Q. There is no question in your mind</p> <p>12 about that the table was loud that night; is</p> <p>13 that right?</p> <p>14 A. It was loud to me. I don't know</p> <p>15 whether to everyone else.</p> <p>16 Q. Who was making a lot of noise that</p> <p>17 night at the table?</p> <p>18 A. I think, you know, pretty much just</p> <p>19 everyone.</p> <p>20 Q. Jeff included?</p> <p>21 A. Yes.</p> <p>22 Q. Was Jeff particularly loud that</p> <p>23 evening at the table?</p> <p>24 A. Um, not particularly loud. But, you</p>
<p style="text-align: right;">42</p> <p>1 sitting as a long table, or you've described</p> <p>2 where you were sitting as a long table --</p> <p>3 A. Yeah, well, I'm pretty sure it was a</p> <p>4 couple of tables put together, you know.</p> <p>5 Q. That's what I wanted to know. And</p> <p>6 help me out and tell me how much time elapsed</p> <p>7 between when the three of you were seated at</p> <p>8 the table and the others who joined you that</p> <p>9 evening arrived.</p> <p>10 A. Um, well, I kind of remember us all</p> <p>11 being like, you know -- they told us our seat</p> <p>12 was ready. And pretty much at the same time, I</p> <p>13 think they were walking in; and we met up with</p> <p>14 them right as we were sitting down.</p> <p>15 Q. Did anybody say while you were at the</p> <p>16 table that night that he was feeling drunk, or</p> <p>17 words to that effect?</p> <p>18 A. Who?</p> <p>19 Q. Anybody at the table.</p> <p>20 A. Anyone feeling drunk?</p> <p>21 Q. Anybody say it, yes.</p> <p>22 A. No, not that I can remember.</p> <p>23 Q. Did anybody while you were at the</p> <p>24 table that night say --</p>	<p style="text-align: right;">44</p> <p>1 know, pretty -- not real loud, but I guess</p> <p>2 everyone was loud enough to have a waiter or</p> <p>3 someone come over and ask us to tone it down.</p> <p>4 Q. And when the waiter or waitress came</p> <p>5 over and asked everybody to tone it down, that</p> <p>6 was at what point in the meal?</p> <p>7 A. That was, you know, I think pretty</p> <p>8 much after we had finished, and it was, like,</p> <p>9 we were just sitting there.</p> <p>10 Q. Just sitting?</p> <p>11 A. Yes.</p> <p>12 Q. Drinking?</p> <p>13 A. They were.</p> <p>14 Q. And give me your best estimate of how</p> <p>15 much time elapsed from when the woman came over</p> <p>16 and told you to tone it down and when you</p> <p>17 all left the restaurant.</p> <p>18 A. Um, maybe 25 minutes, half an hour.</p> <p>19 Q. Did the group tone it down somewhat</p> <p>20 after that?</p> <p>21 A. Yes.</p> <p>22 Q. Other than beers and Manhattans, do</p> <p>23 you know what anybody else was drinking this</p> <p>24 night? And Cokes for you or whatever you were</p>

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1 drinking.  
 2 A. I don't remember anything else. Beer  
 3 or Manhattans. I remember everyone, you know,  
 4 ordering a beer with their meal. And then once  
 5 we got the meal, they ordered a round of  
 6 Manhattans.  
 7 Q. What did the waitress who served you,  
 8 what did she look like?  
 9 A. She was also young, probably around  
 10 the same age as the bartender. I don't  
 11 actually -- I don't really remember too much  
 12 about her.  
 13 Q. Do you remember the color of her  
 14 hair?  
 15 A. I'd say blond, just because there was  
 16 a lot of blond girls that were working there.  
 17 But I don't want to tell you the wrong thing.  
 18 Q. Fair enough. Did I ask you what you  
 19 ate?  
 20 A. No.  
 21 Q. I'm going to ask you, what did you  
 22 eat?  
 23 A. I had a steak.  
 24 Q. Did you have any chowder?

1 when I've been to the LongHorn, I've always  
 2 ordered a steak. But I know for a fact that if  
 3 I ordered a steak, it would have been well  
 4 done.  
 5 Q. It would have been well done?  
 6 A. Yes.  
 7 Q. Because that's the way you like it,  
 8 right?  
 9 A. Yes. In fact, if it was anything,  
 10 hamburger, whatever, that they ask your  
 11 preference on how they cooked it, it would be  
 12 well done.  
 13 Q. How long did it take from when the  
 14 check was paid for your table until you left  
 15 the LongHorn?  
 16 A. I think we left just as we were  
 17 paying. Pretty sure, yes.  
 18 Q. Did anyone in your group drink  
 19 anywhere else at the LongHorn that night other  
 20 than at the table after the check was paid?  
 21 A. Well, I mean, before at the bar,  
 22 but...  
 23 Q. I understand that. But after the  
 24 check was paid at the table, did your group

46

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1 A. No. Clam chowder?  
 2 Q. Any kind of chowder.  
 3 A. No.  
 4 Q. Did you have any chicken fingers?  
 5 A. No.  
 6 Q. You were drinking what?  
 7 A. Ah, either Sprite or a Coke. I was  
 8 drinking water for a while, actually.  
 9 Q. Just give me a second. Do you  
 10 remember anyone having chowder?  
 11 A. I kind of do. I mean, I kind of, ah,  
 12 I'd say that if anyone ordered it, it was  
 13 probably Mike Espy. I kind of remember  
 14 chowder, clam chowder or some sort of soup  
 15 being ordered. I just remember seeing it on  
 16 the table.  
 17 Q. Okay. And you had a steak; you're  
 18 sure of that?  
 19 A. Um...  
 20 Q. Well, let me withdraw the question.  
 21 Let me ask you this. Did you order your steak  
 22 well done?  
 23 A. I'm almost positive that I ordered a  
 24 steak, because, you know, when I -- at least

1 then proceed to the bar, let's say?  
 2 A. No.  
 3 Q. And did you then get back into the  
 4 truck with Jeff and Scott?  
 5 A. Yes.  
 6 Q. And the same seating arrangement?  
 7 A. Yes.  
 8 Q. Was it the same seating arrangement?  
 9 A. Yes.  
 10 Q. Okay. Did you then proceed to the  
 11 Four Points Hotel in Fitchburg?  
 12 A. Yes.  
 13 Q. Do you remember any of the  
 14 conversation during that trip?  
 15 A. Um, yeah, I think -- well, I know  
 16 that the two kids from out of town were staying  
 17 at the hotel.  
 18 Q. Yup.  
 19 A. And I remember Jeff and Scott  
 20 debating whether they -- because I know that  
 21 the rest of group was going -- you know,  
 22 besides Scott, myself, and Jeff, the rest of  
 23 the group, Mike, Todd, and the other two kids,  
 24 they were going to go to The Other Side. It's,



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1 like, a strip club down the street in  
2 Fitchburg. And Scott and Jeff were debating  
3 whether they wanted to go to it.

4 Q. This is on the ride from the LongHorn  
5 to the Four Points?

6 A. Yes.

7 Q. That's when they had that  
8 conversation?

9 A. Mm-hmm.

10 Q. Is that yes?

11 A. Yes.

12 Q. Okay. While you were at the  
13 LongHorn, did Jeff appear to you to be under  
14 the influence of what he had been drinking at  
15 the LongHorn?

16 A. I mean, yeah, a little bit.

17 Q. What did he -- what did he show, what  
18 did he manifest that makes you say that?

19 A. Um, I don't know. Well, Jeff is,  
20 like, every time I've seen him, he always  
21 stands up real straight. He's a big kid. You  
22 know, he kind of -- he's not -- it's not like  
23 he talks a lot, you know. He waits until he is  
24 talked to or -- unless he's talking to someone,

1 Q. At the Steakhouse?

2 A. Yeah, I don't remember specifically  
3 seeing his eyes, you know, looking -- seeing  
4 them glossy. But very well, very well could  
5 have. That could be.

6 Q. Were his eyes closed somewhat while  
7 he was at the Steakhouse?

8 A. No.

9 Q. Let me ask you this. At some point  
10 in time, there was a discussion among Scott,  
11 Jeff, and you about that Jeff was too drunk to  
12 drive; isn't that right?

13 A. Is this at the Steakhouse?

14 Q. No. At some point in time that  
15 night.

16 A. Um, I kind of -- yeah, I kind of  
17 remember it when we got to the -- no, did,  
18 ah -- I don't know whether it was when we were  
19 leaving the hotel or when we pulled into the  
20 parking lot of The Other Side, whether it was  
21 right then, but, yeah, I do kind of remember  
22 something of that.

23 Q. While you were sitting in the parking  
24 lot at The Other Side, do you remember at least

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1 he doesn't really -- he's not an obnoxious kid  
2 or anything, you know.

3 That night he was, you know, sort of  
4 just seemed to me that he was a little bit  
5 under the influence just because by the way he  
6 didn't really hold himself -- at least it  
7 looked like he didn't hold himself the same way  
8 as he usually did.

9 Q. Was he sloppier looking than he  
10 usually is?

11 A. A little bit, yes.

12 Q. Was he louder than he usually  
13 appeared to you?

14 A. Yeah, I mean, yeah.

15 Q. Was he more boisterous than he  
16 usually is?

17 A. Ah, not that much. I mean, he's  
18 usually -- when he wants to say something, he  
19 says it and, you know.

20 Q. Was his speech slurred at all that  
21 night at the LongHorn Steakhouse?

22 A. No. Not that I remember.

23 Q. Okay. Were his eyes glassy at all?

24 A. Maybe, yeah.

1 Scott and Jeff having a conversation about that  
2 Jeff was too drunk to drive?

3 A. Um, well, I don't remember them  
4 saying, you know, he was too drunk to drive.  
5 But I remember Scott saying, I'm going to  
6 drive; you know, you're not going to. And  
7 actually, when we left the hotel and went --  
8 drove to The Other Side, Jeff was actually  
9 sitting in the back.

10 Q. By then?

11 A. Yes. He was with his dogs, actually.

12 Q. Was he slumped over in the back of  
13 the truck from the trip -- on the trip from the  
14 hotel to The Other Side?

15 A. No. I mean, I wasn't -- I was  
16 sitting up front. I wasn't really looking  
17 back. But, no. I mean, he was -- it was kind  
18 of crowded, I think. He has two dogs. His two  
19 rottweilers are always with him. And we had --  
20 Mike Espy actually came with us for that ride.

21 Q. Oh, Mike was in the Dakota; is that  
22 right?

23 A. Yeah, Dakota, I think, yeah. So they  
24 were in the back with the two dogs. So it was

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1 a little bit crowded.

2 Q. Do you remember anything that they  
3 said during that trip, Jeff and Mike, in the  
4 back?

5 A. Not really.

6 Q. Okay. To drive from the LongHorn to  
7 the --

8 A. The Other Side?

9 Q. No, to the Four Points.

10 A. Oh, oh, yes. Yes.

11 Q. Which is the drive you took that day,  
12 took approximately how long?

13 A. Um, 10 minutes, 15 minutes.

14 Q. Did you go on Route 12?

15 A. Um, well, I know that you have to get  
16 on Route 12 to go to the Four Points. You  
17 know, it's off of Route 12. I kind of -- I  
18 think we took Route 2. I mean, that's the way  
19 I'd go. I don't actually remember  
20 specifically.

21 Q. Do you know what the distance is from  
22 the LongHorn to the Four Points?

23 A. It's probably, you know, three miles  
24 maybe. It's not very far.

1 A. Mm-hmm.

2 Q. This is from the LongHorn to the --

3 A. Yes, yes.

4 Q. -- to the Four Points?

5 A. He was in the back.

6 Q. And did he say why he wanted to be in  
7 the back?

8 A. Um, I mean, I kind of remember him  
9 saying he wanted to be -- I don't think Mike  
10 really wanted to be sitting next to the dogs.

11 So I think Jeff -- I kind of remember him  
12 saying he was sitting in the back just to take  
13 care of the dogs. But I mean, I don't remember  
14 him saying anything else but that.

15 Q. Approximately how long were you at  
16 the Four Points?

17 A. Thirty-five minutes, 40 minutes.

18 Q. And you stayed inside the hotel in a  
19 corridor next to the room; is that right?

20 A. Yeah, it was, like, right next to the  
21 elevators.

22 Q. Do you remember testifying before the  
23 grand jury in this case?

24 A. Yes.

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1 Q. Okay.

2 A. It's actually one exit down on  
3 Route 2, and they're both a very short distance  
4 off of the off-ramp.

5 Q. So it's one exit off of Route 2?

6 A. Mm-hmm.

7 Q. Route 2 is -- the LongHorn is right  
8 at the intersection of Route 2 and Route 12?

9 A. Well, not directly. But there is,  
10 like, a big shopping plaza, and it's right next  
11 to the shopping plaza.

12 Q. And as far as you know, the three of  
13 you went directly from the LongHorn to the Four  
14 Points; is that right?

15 A. Yes. There were four of us in the  
16 car at that point.

17 Q. At that point, there were four?

18 A. Yes.

19 Q. Who was the fourth?

20 A. Mike Espy.

21 Q. Was Jeff in the front during that  
22 ride, or was he back with the dogs by then?

23 A. He was in the back.

24 Q. By then he was in the back?

1 Q. In the criminal case against Jeff  
2 Southworth?

3 A. Mm-hmm (nodding.)

4 Q. Do you remember then saying that you  
5 were 15 to 20 minutes in the area outside the  
6 room?

7 A. Yeah.

8 Q. That sounds about right to you?

9 A. Yeah.

10 Q. Okay. And Jeff had one beer at that  
11 point; is that right?

12 A. Yeah.

13 Q. And it was from a can; is that right?

14 A. Yes, it was.

15 Q. Do you know the difference between a  
16 12-ounce can and a 16-ounce can?

17 A. Yeah, it's got --

18 Q. One is bigger.

19 A. Yeah, it's got more in it.

20 Q. Do you know which one he was drinking  
21 from?

22 A. Twelve-ounce, I'd say.

23 Q. Okay. And while he was drinking from  
24 that 12-ounce can -- strike that.

1 Do you know how long it took you to  
2 drive from the hotel to The Other Side?

3 A. Takes about five minutes. It's a  
4 very short distance. It's right on Route 12,  
5 I'm pretty sure.

6 Q. Route what?

7 A. Route 12. I know it's at least --  
8 you don't turn unless Route -- well, Route 12  
9 may make a turn off. But I know that you stay  
10 on the same road.

11 Q. And do you know how long you were in  
12 the parking lot of The Other Side?

13 A. Yeah.

14 Q. Before you left?

15 A. Actually, we -- I didn't really want  
16 to go there. I kind of didn't want to go to  
17 dinner. I kind of thought -- I didn't know we  
18 were going to go to dinner. So I was like, We  
19 should just go back to Harvard and get dropped  
20 off. And Jeff was like, All right, yeah, I'm  
21 ready to go; I don't really want to go inside  
22 either. So we actually -- he still had Mike in  
23 the car. Well, he got back in the car from the  
24 hotel with us.

1 Q. Mike?

2 A. Yes.

3 Q. Right.

4 A. And we dropped him off, you know,  
5 right outside. Pulled in, basically. We  
6 didn't even get out of the car. He got out,  
7 and then we left.

8 Q. Okay. So you were in the parking lot  
9 at The Other Side only as long as it took to  
10 drive through the parking lot to the door of  
11 The Other Side and let Mike exit the Dodge  
12 Dakota, and then shut the door and leave the  
13 parking lot?

14 A. Yes.

15 Q. Is that right? Okay. And then did  
16 the three of you, Jeff, Scott, and yourself,  
17 did you then proceed back to Templeton?

18 A. No.

19 Q. Where did you go?

20 A. We went -- well, we were heading back  
21 to Harvard. But we had to go to -- it's  
22 actually -- it's -- I believe it's in  
23 Littleton. It's right off of 495. There is an  
24 apartment or condominium complex. I know that

1 Scott had left his car there. That's where  
2 he -- I guess his grandmother lives there. So  
3 he left his truck there.

4 Q. So you went from The Other Side to  
5 the apartment complex in Littleton?

6 A. Yes.

7 Q. Which is right off 495; is that  
8 right?

9 A. Yes.

10 Q. And the route that you traversed, the  
11 route you drove from The Other Side to the  
12 apartment complex was Route 2; is that right?

13 A. Yeah. Um, yeah, it was Route 2 to  
14 495.

15 Q. Okay. How long were the three of you  
16 at the apartment complex together that night?

17 A. Um, well, I mean, we pulled in, you  
18 know, right across from Scott's truck. Scott  
19 and I got out. Jeff got out, got in the  
20 driver's seat.

21 I jumped up in the bed and grabbed my  
22 bag, you know, and Scott left his stuff with  
23 Jeff. I just grabbed my dirt-biking bag, my  
24 boots, my helmet, and just threw it off the

1 truck, got out of the bed, and he left.

2 Q. He took off, Jeff?

3 A. Yeah.

4 Q. So that whole process of pulling in  
5 and parking beside Scott's truck through Jeff  
6 taking off and leaving --

7 A. Mm-hmm.

8 Q. -- was a matter of how long,  
9 approximately?

10 A. Two minutes, three minutes. It was  
11 very short.

12 Q. Jeff drove over Scott's foot on the  
13 way out?

14 A. Yes. He -- we -- you know, you pull  
15 in right here. And Scott was parked over here,  
16 and Jeff pulled in over here (indicating). I  
17 threw all my stuff -- you know, there is a  
18 little island of grass. I threw it all right  
19 there, and I jumped out. That's where I was  
20 standing.

21 And Scott was telling me, you know,  
22 hurry up and grab my stuff so we can go. And I  
23 did that. And he was standing at that point  
24 still right next to the truck.

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1 Q. Scott?  
 2 A. Yes.  
 3 Q. And --  
 4 A. And Jeff, you know, backed out. And  
 5 however it happened, his ankle got stuck or  
 6 went underneath the tire or something. And,  
 7 you know, Scott immediately said to me, he's  
 8 like, Oh, he just ran over my ankle.

9 And he was still walking on it. He  
 10 didn't think it was, you know -- at that point,  
 11 he didn't think it was broken until, you know,  
 12 Jeff pulled out of the parking lot and he was  
 13 gone.

14 We, like, started walking over to the  
 15 truck, and, you know, immediately Scott, you  
 16 know, went over and sat down on his truck and  
 17 took his shoe off, looked right at this ankle,  
 18 and was, like, Something is wrong, you know.

19 Q. At any point in time that night, were  
 20 you looking to get away from Jeff, leave Jeff?

21 A. Ah, no, I wasn't trying to get away  
 22 from him. I was just actually trying to get  
 23 home.

24 Q. Did your parents know that you were

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1 going to go out that night?

2 A. You mean dirt-biking or?

3 Q. Late, after dirt-biking.

4 A. They figured I would.

5 Q. Why did you want to get home?

6 A. Ah, I think I -- I was just, you  
 7 know, out, and I wanted to go home. I had been  
 8 dirt-biking. I wanted to take a shower. I  
 9 didn't know we were going to go out to dinner.  
 10 So I kind of assumed that I was going --  
 11 originally, from the sandpit, I was going to go  
 12 with my brother out to his place and stay out  
 13 there for the night.

14 Q. In Amherst?

15 A. Yes. But then I decided I'll just go  
 16 back home. But I hadn't called my parents or  
 17 anything and told them what my plans were, so  
 18 at that point, they assumed I was just coming  
 19 home that night. So I figured that's what I'd  
 20 do.

21 Q. Did Jeff pay for your -- you said  
 22 Jeff paid for your dinner food?

23 A. Dinner, yes.

24 Q. Did he pay with cash?

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1 A. Yes, he did.

2 Q. You didn't see him use a credit card  
 3 at all?

4 A. No, I didn't.

5 Q. And did the others pay with cash as  
 6 well?

7 A. I'm pretty sure we did, yeah. I  
 8 think the whole bill was paid for in cash.

9 Q. Do you remember any conversations  
 10 that anyone in your group had with anyone at  
 11 the restaurant, any employee or person you  
 12 understood to be an employee at the restaurant  
 13 while you were at the restaurant other than the  
 14 conversation with the employee who said to  
 15 quiet down?

16 A. No, no.

17 Q. Do you remember the waitress asking  
 18 anyone in your group for an ID, some proof that  
 19 people in the group were old enough to drink?

20 A. I don't remember that, no.

21 Q. How about at the bar? Do you  
 22 remember the bartender asking anyone in your  
 23 group for identification?

24 A. No, I don't recall that either.

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1 Q. Scott realized at some point in time  
 2 while you were in the parking lot of the  
 3 apartment complex Jeff had driven off with his  
 4 keys; is that right?

5 A. Yeah. It was, like, he realized that  
 6 something was wrong with his ankle. And he,  
 7 like, opened his bed, the door to the truck,  
 8 the bed of the truck, and he sat down, and he  
 9 was looking at the ankle. And he said, All  
 10 right, let's go.

11 And he reached into his pocket and  
 12 was like, you know, it was the worst thing that  
 13 can happen. And then right then, we tried  
 14 calling Jeff. And I remember getting in touch  
 15 with him on his cell phone. I called him, you  
 16 know.

17 I was like, Jeff, you know, you just  
 18 ran over his ankle, you know. He's like, I  
 19 did? I was like, Yeah, I think it's broken.  
 20 And we also left the keys in the truck; you're  
 21 going have to turn around. He was like, Oh,  
 22 all right, you know, I'll turn around at the  
 23 next exit.

24 I don't remember specifically what we



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1 were saying, but I remember telling him that he  
2 ran over his ankle and that we forgot the keys.  
3 He was like, All right, I'm turning around.

4 Q. You made the call to Jeff from your  
5 cell phone; is that right?

6 A. Yes. We were both trying, but I  
7 think I was the first one to get through.

8 Q. And do you know from the time that  
9 Jeff pulled out of the parking lot until you  
10 got through to Jeff and had that conversation  
11 with him, how much time elapsed?

12 A. Not more than five minutes, you know.  
13 We were sort of worried about -- I was sort of  
14 worried about Scott's ankle before. You know,  
15 we were trying to get into the truck. And we  
16 realized afterwards that he didn't have his  
17 keys and started calling him.

18 Q. So is it accurate to say you didn't  
19 get through on the first call to Jeff?

20 A. Yes.

21 Q. But is it also accurate to say it  
22 wasn't a matter of more than a few minutes  
23 before someone, you think yourself, was able to  
24 get through to Jeff?

1 but my question to you was when was it that you  
2 next had any communication with him?

3 A. Oh, yes. Well, we figured that he  
4 wasn't going to be coming, you know. We waited  
5 there for a while. We were -- I remember keep  
6 on trying to call him. And I don't -- I can't  
7 quite remember whether it was Scott or I that  
8 got in touch with him. But I know that we did.

9 And he said, you know, I got into an  
10 accident, you know. And we were, like, you  
11 know, Why didn't you call us? You know, What's  
12 going on? Are you all right? You know, Where  
13 are you, you know. He didn't say anything. He  
14 didn't say much. Then the call just ended.

15 And at that point, we were like,  
16 Well, who are we going to call? I think it was  
17 almost -- I think it was around almost one  
18 o'clock at that point. So we didn't really  
19 want to call Scott's parents to see if they  
20 could bring the extra set of keys. So we ended  
21 up just breaking one of the windows in Scott's  
22 car so he could get in, because he had an extra  
23 key in his car.

24 Q. So your best memory of what time it

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1 A. Yes.

2 Q. And when next after that conversation  
3 with Jeff where he said, in effect, that he  
4 would turn around, was it that you had any  
5 communication with Jeff?

6 A. Well, we waited there for a while for  
7 Jeff to come back. It was, you know, probably  
8 maybe a half an hour, maybe even more. I know  
9 that it was a good while. And we figured, you  
10 know, he'd show up.

11 And then we started to call him  
12 again, try to get in touch with him. We  
13 weren't sure where he was, why he wasn't  
14 showing up. He couldn't have been that far  
15 down the road. We figured maybe he had, you  
16 know, another five, two minutes to get to the  
17 next, you know, exit so he could turn around.  
18 Because at that point he was on 495.

19 Q. He told you he was on 495 when you  
20 spoke to him?

21 A. Um, yes. Yeah, well, I know for a  
22 fact that he was on 495. But I also think he  
23 said he was on 495.

24 Q. So you waited for about half an hour,

1 was when Jeff told you he got into the accident  
2 was how long after he left the apartment  
3 complex?

4 A. Maybe 40 minutes, 45 minutes almost,  
5 yeah.

6 Q. After that conversation, did you have  
7 any further contact with Jeff that day?

8 A. No. Um, after we spoke with -- I  
9 can't -- don't remember which one of us it was  
10 speaking with him. I remember trying to call  
11 him after we talked to him and he said that  
12 he'd crashed. I remember specifically trying  
13 to call him, like, lots of times. I left  
14 messages saying, Where are you? Are you all  
15 right? Can we come get you?

16 I know for a fact that I left a  
17 message. And I don't know if Scott -- but I'm  
18 guessing that he left a message on his cell  
19 phone. We eventually just figured that he was  
20 on 495.

21 So what we did was, you know, after  
22 we broke the window, we cleared, like, all the  
23 glass away, we just started heading up 495.  
24 Because we didn't know -- we knew he was

1 somewhere on 495. So we headed up 495 North,  
2 and we didn't really -- didn't know how far he  
3 would have gotten. Tried to figure it out, our  
4 judgment. And we got on at the on-ramp right  
5 next to the apartment complex.

6 Q. Route 2?

7 A. No. This is 495.

8 Q. But at what intersection is that on  
9 495, if you know?

10 A. Well, I know that there are two exits  
11 for Littleton on 495 North.

12 Q. Mm-hmm.

13 A. And South. I know we were at the  
14 first one. So we got on at the first one.  
15 And, you know, we passed the second exit for  
16 Littleton Common and Groton and Acton.

17 Q. Yup.

18 A. And between there and the next  
19 exit -- Westford; Boston Road, Westford, I  
20 think -- we saw, you know, all these cops lying  
21 on the south side. We saw lots of cop cars,  
22 you know, ambulances, all sorts of police and  
23 ambulance vehicles.

24 So we assumed that that was, you

1 couldn't see anything.

2 And at that point, we got off at the  
3 Groton/Acton exit. It was, you know, we  
4 headed, like, over to the south side, because  
5 we figured if he was anywhere, you know, he'd  
6 either be at the crash scene, you know, with  
7 the cops or whatnot.

8 But we hadn't talked to him, you  
9 know. We figured he'd call us. So what we did  
10 is we stayed in that area, and we continued to  
11 try and get in touch with him. That's when we  
12 left messages, Where are you? Can we come get  
13 you? Are you all right? What happened? And  
14 he never called us. And, you know, we never  
15 got in touch with him.

16 Q. So finally you went home?

17 A. Yes.

18 Q. Have you spoken to Jeff since that  
19 night?

20 A. No, I have not.

21 Q. Have you spoken to anybody that you  
22 understand is assisting Jeff in this matter?

23 A. Um, other than my brother, who is  
24 taking care of his dogs, I actually -- I talked

1 know, he must have crashed there. And we  
2 realized it was definitely something serious.  
3 So we drove up to the Westford exit, and we  
4 turned around.

5 And we actually made the cycle, like,  
6 I believe we went and turned around again just  
7 to make sure that we -- because we were trying  
8 to see. The first time we drove by, we  
9 couldn't, you know, couldn't see any cars. You  
10 could just see the police cars.

11 Q. Yup.

12 A. So I couldn't see, you know. I was  
13 looking for his truck.

14 Q. Yup.

15 A. To try and figure out if it was his  
16 crash or some other crash, if he was even  
17 there. All the meanwhile we were trying to  
18 call him, and we couldn't get in touch with  
19 him.

20 We didn't see any trucks or any cars  
21 at all. We didn't see anything crashed. We  
22 just saw all the squad cars and the ambulances.  
23 So that's -- we took another loop around to see  
24 if we could. And it was the same thing. We

1 to his mother on the phone once. She called  
2 looking for my brother. But no, no one else.  
3 I didn't really talk to her about anything.

4 Q. Do you know how it is your brother is  
5 taking care of Jeff's dogs?

6 A. Yeah. Um, well, my brother actually  
7 just got -- this was last -- the beginning of  
8 last -- beginning -- the summer of 2003.

9 Q. Yes.

10 A. My brother purchased a rottweiler  
11 puppy. So he had just gotten a dog, and it was  
12 a few months after that he had just picked up  
13 the responsibility of a dog. And he liked the  
14 rottweilers. And we were all used to his two  
15 dogs, Ruby and Daisy. We knew them. They were  
16 familiar with us, with my brother's dogs.

17 So he decided, you know, his parents  
18 didn't want to, you know, keep them and take  
19 care of them. So my brother, I guess -- I  
20 don't whether he said he would or they asked  
21 him. I'm not really sure.

22 Q. Where does your brother live in  
23 Amherst?

24 A. He actually lives at, it's right next

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1 to Amherst. It's like 15 minutes out of  
 2 Amherst. Shutesbury.  
 3 Q. Shutesbury?  
 4 A. Yes.  
 5 Q. Does he have a house?  
 6 A. Yes, he rents part of a house.  
 7 Q. At the LongHorn that night, do you  
 8 recall whether there were, in the area between  
 9 the booths here and the booths here  
 10 (indicating), any tables other than the tables  
 11 that you all were sitting at?  
 12 A. Um, I kind of don't remember any  
 13 other tables being in between the booths and  
 14 stuff.  
 15 Q. Within the area that you've encircled  
 16 here on Exhibit 1, do you remember any tables  
 17 other than the table that your group was at,  
 18 the table or tables that your group was at?  
 19 A. No. No.  
 20 Q. Do you remember any people while your  
 21 group was at its table, any people sitting in  
 22 any of the booths on either side of your table?  
 23 A. Um, yeah. I was actually sitting,  
 24 like, on -- I was sitting on this side facing

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1 that way (indicating). And I know -- I'm  
 2 pretty sure there were a few people here, but I  
 3 can't really remember. I know there was a  
 4 group of people sitting in the corner booth.  
 5 And I know there was at least one group of  
 6 people in one of those booths.  
 7 Q. Can you put an X where there was a  
 8 group sitting in the corner?  
 9 (Witness complies.)  
 10 Q. Circle that X for me.  
 11 A. Sure.  
 12 Q. And put a Y where you found some  
 13 people sitting in another booth you pointed out  
 14 earlier.  
 15 A. I'm not really sure which booth it  
 16 was. I'll just put it right here.  
 17 Q. Why don't you circle that, too.  
 18 (Witness complies.)  
 19 Q. Just put your initials where you were  
 20 sitting, small though.  
 21 (Witness complies.)  
 22 Q. Where was Jeff sitting?  
 23 A. He was sitting, like, across from me  
 24 at the end of the table.

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1 Q. At the head of the table?  
 2 A. Well, it wasn't at the end. I don't  
 3 think -- I don't know if anyone was sitting at  
 4 the end. He was sitting like, at the corner.  
 5 Like, say this was the table. He was sitting  
 6 right here, where I am.  
 7 Q. Put Jeff in for me, JS.  
 8 (Witness complies.)  
 9 Q. So Jeff and you were both sitting at,  
 10 as you face Exhibit 1, the right-hand end of  
 11 the table; is that right?  
 12 A. Yes.  
 13 Q. And was there anything while you were  
 14 sitting there obstructing your view of Jeff  
 15 across the table?  
 16 A. Um, nothing really. I mean, there  
 17 was maybe, like, a lantern on the table or  
 18 something. But nothing obvious.  
 19 Q. You could see his face when you were  
 20 talking to him?  
 21 A. Yeah.  
 22 Q. Okay. Did you ever learn that Jeff  
 23 had been charged with trafficking drugs, in  
 24 federal court, in Vermont?

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1 A. No.  
 2 Q. You didn't know that?  
 3 A. No.  
 4 Q. Now you do.  
 5 A. (Witness nods.)  
 6 Q. Did you know that Jeff had been  
 7 charged with driving under the influence and  
 8 leaving the scene of an accident in Amherst,  
 9 Mass., in 2003?  
 10 A. No. I had heard that he had gotten  
 11 into an accident -- or his truck -- I remember  
 12 hearing that his truck was totalled out in  
 13 Amherst. But I don't remember hearing much  
 14 about it.  
 15 Q. Do you remember Jeff ever saying to  
 16 you that his license to operate was suspended  
 17 in Massachusetts?  
 18 A. No.  
 19 Q. Did you ever see Jeff smoke  
 20 marijuana?  
 21 A. Nope, never have.  
 22 Q. Did you ever see him ingest any  
 23 narcotics?  
 24 A. No.



1 Q. I'm near the end, I think. Just give  
2 me a second or two, please. Do you know what a  
3 fire wrap is at the LongHorn Steakhouse?

4 A. No. Is it a blanket or something to  
5 wrap someone with if they're on fire?

6 Q. You don't know of a dish of food  
7 named a fire wrap; is that right?

8 A. No.

9 Q. Do you know what Jeff's father did  
10 for work?

11 A. No, I don't.

12 Q. Did Jeff ever talk to you about what  
13 his father did for work?

14 A. Nope.

15 Q. Did he ever talk to you about his  
16 father?

17 A. Not that I can remember.

18 Q. Do you remember Jeff ever saying to  
19 you --

20 A. Actually, I remember his father -- he  
21 did say one thing about his father. I remember  
22 that he was talking about his father getting a  
23 new boat and that he was wanted to get his  
24 dad's old boat.

1 Q. The old boat?

2 A. Yes.

3 Q. Was it a sailboat?

4 A. Yes.

5 Q. And did you know how big it was?

6 A. Ah, no. I mean, I think it was,  
7 like, 30 feet maybe. I'm not positive.

8 Q. What makes you say that Jeff got that  
9 boat?

10 A. I remember -- well, he was, like,  
11 really into -- he was really -- he seemed like  
12 he really wanted to get it. And I remember him  
13 saying that he was, you know -- he didn't say  
14 anything about he wasn't going to get it. He  
15 didn't say anything about his dad selling the  
16 boat. He said he was going to get his dad's  
17 boat, yes.

18 Q. He told you his dad was going to give  
19 him his boat?

20 A. Yes. Well, I don't know whether he  
21 was going to give it to him. I don't know what  
22 the situation was. I just remember him saying  
23 he was going to acquire a boat.

24 Q. Do you know where the boat was when

1 And he was -- it was a sailing boat  
2 he was talking about. And, like, his dad was  
3 into sailing a lot. And his dad got a new  
4 boat, and Jeff was saying he wanted to try to  
5 get into it, and he wanted to get his dad's old  
6 boat.

7 Q. Did he get his dad's old boat, as far  
8 as you know?

9 A. I think so, yeah.

10 Q. When did you have that conversation  
11 with him?

12 A. You mean about what his dad --

13 Q. His dad's boat, getting his dad's  
14 boat.

15 A. Um, you know, it was probably two  
16 weeks, a week prior to all of this happening.

17 Q. And did he describe the dad's new  
18 boat, his dad's new boat to you?

19 A. No. I remember him showing me, like,  
20 a printout or something. It was like a  
21 computer printout of, like, pictures of the  
22 boat that his dad owned, though.

23 Q. The new boat or the old boat?

24 A. The old boat.

1 you were talking about it?

2 A. Well, I know it was -- maybe, well, I  
3 assumed it was in Portsmouth, because I knew  
4 that's where his father and his mother and he  
5 lived.

6 Q. You never went sailing with Jeff?

7 A. No.

8 Q. Did you have any other conversations  
9 with Jeff about Jeff getting things from his  
10 father?

11 A. No.

12 Q. Did Jeff ever tell you that his  
13 father had a lot of money or words to that  
14 effect?

15 A. He never mentioned anything. I kind  
16 of assumed just because, I mean, Harvard,  
17 there's a lot of rich people from Harvard.  
18 Also, he had a pretty nice truck. I kind of,  
19 you know, didn't think that the average kid  
20 would drive a brand new truck like that.

21 So I kind of figured that his  
22 parents, you know, having boats and his kid  
23 driving a nice car like that and they were from  
24 Harvard, and -- I just kind of assumed that



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1 they had money.  
 2 Q. The truck that he was driving the  
 3 night of the accident was a rental truck,  
 4 that's the Dodge Dakota; is that right?  
 5 A. Yes.  
 6 Q. But the truck you're talking about,  
 7 the pretty nice truck, was some other truck; is  
 8 that right?  
 9 A. Yes.  
 10 Q. What was that?  
 11 A. Um, I'm pretty sure it was, like, a  
 12 Chevy Silverado. I think it was a -- I know it  
 13 was diesel. I think it was -- I don't know the  
 14 exact name. I think it's, like, Duramax Diesel  
 15 or something, the name of the model or  
 16 something.  
 17 Q. Was that the truck that he had had  
 18 the accident with in Amherst, if you know?  
 19 A. No. It's -- I remember hearing that  
 20 he had, you know -- a car, a truck got totaled.  
 21 And then he got -- he had this new truck. And  
 22 that was -- that's the new truck that I was  
 23 talking about. It was brand new, pretty much.  
 24 I think it was brand new.

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1 Q. Did Jeff work?  
 2 A. Um, not that I knew of.  
 3 Q. Did you ever talk to him about how he  
 4 supported himself?  
 5 A. No.  
 6 Q. Did anyone ever tell you how he  
 7 supported himself?  
 8 A. No.  
 9 Q. Did you ever see Jeff use a credit  
 10 card?  
 11 A. Nope.  
 12 Q. Prior to that night, September 26,  
 13 2003, had you ever seen Jeff when you believed  
 14 he was under the influence of alcoholic  
 15 beverages?  
 16 A. I'd seen him at the party that I  
 17 mentioned before. I mean, I'd seen him  
 18 drinking. I don't know if I can say that I've  
 19 seen him drunk. I don't think I can, for a  
 20 fact.  
 21 Q. But my question is, have you ever  
 22 seen him exhibiting what you understood or  
 23 interpreted to be signs of being under the  
 24 influence of alcoholic beverages?

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1 A. Um, no.  
 2 Q. Prior that night?  
 3 A. No.  
 4 Q. Did you ever see Jeff in a fight?  
 5 A. Well, yeah, actually.  
 6 Q. Fist-fight?  
 7 A. Yeah, I have once.  
 8 Q. Where?  
 9 A. It was in Harvard.  
 10 Q. Where in Harvard?  
 11 A. Right in the center, actually. At a  
 12 kid's house. It's right across from the  
 13 school. His name is Bob West.  
 14 Q. Was Jeff drinking that night?  
 15 A. Ah, actually I don't know. I was  
 16 inside the house. And I came out, and he was  
 17 there along with -- my brother was there. It  
 18 was actually -- the fight actually happened --  
 19 Bob West, he's a year older than me. And my  
 20 brother's a year older than him. So when I was  
 21 in, you know, say 9th grade, Bob would be in  
 22 10th grade. My brother was in 11th.  
 23 And Bob West was dating this girl  
 24 from my grade. Her name was Ashley Vallente.

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1 And my brother liked her. And, you know,  
 2 eventually somehow -- I don't -- a lot of  
 3 tension was between my brother and Bob West.  
 4 And now my brother is dating Ashley.  
 5 But I know that there is a lot --  
 6 they don't like to ever see each other, talk to  
 7 each other. They don't ever talk about  
 8 anything. But I know that my brother and Jeff  
 9 were there. And there were other people. I  
 10 can't -- I don't remember really who else was  
 11 there.  
 12 And, you know, Bob, like -- when I  
 13 came outside, they were all in the driveway.  
 14 And Bob West and a few of his friends, they had  
 15 been drinking, you know. Very well -- I'd say,  
 16 he was probably drunk. He was telling, you  
 17 know, my brother -- and specifically he was  
 18 telling my brother that he couldn't be there  
 19 and that, you know, basically anyone that was  
 20 with him wasn't allowed there.  
 21 And, you know, what sort of happened  
 22 was, like, you know, whenever there's a party  
 23 in Harvard, Bob West and his friends would go  
 24 there. And no one would ever tell them that

1 they couldn't be there.  
2 So a little bit of a conflict. They  
3 were saying, Oh, there's no reason that I can't  
4 be here, blah, blah, blah. I don't even know  
5 who, like, threw the first punch or whatever.  
6 I know that Jeff was on crutches at the time.  
7 And somehow a fight broke out.  
8 Q. When was this?  
9 A. This was probably the summer of --  
10 2002? Yes.  
11 Q. Okay.  
12 A. Maybe towards the winter, a little  
13 towards the winter.  
14 Q. Do you know why he was on crutches?  
15 A. No, I don't. I kind of assumed it  
16 was maybe dirt-biking, but I'm not positive.  
17 Q. Okay. Have you ever met Jeff's  
18 father?  
19 A. No, I haven't.  
20 Q. Have you ever met his mother?  
21 A. Yes.  
22 Q. When is the last time you spoke to  
23 her?  
24 A. I spoke to her on the phone very

1 anything else. Thank you. At least right now.  
2 CROSS EXAMINATION  
3 BY MR. SULLIVAN:  
4 Q. My name is Jim Sullivan. I represent  
5 Mr. Southworth in this case. I just have a few  
6 follow-up questions for you. Just give me a  
7 second to take a look at my notes.  
8 A. All right.  
9 Q. You were asked some questions earlier  
10 about Jeff's father's old boat?  
11 A. Okay.  
12 Q. And I think you indicated that you  
13 thought that Jeff may have become the owner of  
14 that old boat, correct?  
15 A. Yes.  
16 Q. What did you base that on?  
17 A. Well, um, I remember Jeff showing me  
18 the pictures of it and saying, This is my dad's  
19 boat and, you know, I want to get it, and he's  
20 getting a new one. I kind of just figured, you  
21 know, his dad is getting a new boat.  
22 I don't think he would have any --  
23 maybe if he's collecting them, he'd kept the  
24 other one, but he never told me anything about

1 briefly when she called looking for my brother.  
2 But the last time I actually spoke to her  
3 was -- she -- Jeff left at my house underneath  
4 our garage, we left his -- the cap to his  
5 truck. Because we took it off to throw the  
6 dirt bikes in. They didn't fit with it on  
7 there.  
8 And his mother was selling his truck  
9 after everything happened. This was, you know,  
10 earlier, the spring, I believe. And his mother  
11 came to pick it up with the buyer of the truck,  
12 and you know, because they were going to buy it  
13 for, you know, an extra, whatever, 500 bucks or  
14 something. But they all came down to pick it  
15 up. And that was the last time I had seen her  
16 and really spoke to her.  
17 Q. Did you speak to her about the  
18 accident at all?  
19 A. No, I didn't.  
20 Q. Have you ever spoken to Jeff's  
21 sister?  
22 A. No. I didn't even know he had a  
23 sister.  
24 MR. FARRAH: I don't think I have

1 his dad collecting boats.  
2 I kind of just assumed that, you  
3 know, his son was into it; if my dad had a boat  
4 and he was getting a new boat, I'd, you know --  
5 and I was into boats, I just kind of base it on  
6 a situation like that, you know.  
7 Q. But it's more of an assumption?  
8 A. Yes. But I do remember him saying  
9 that, Oh, I want to get this boat from my dad;  
10 he's getting a new one.  
11 Q. Did Jeff ever tell you that his  
12 father had transferred the title to the boat  
13 over to him?  
14 A. No.  
15 Q. Did he ever indicate that his father  
16 had ever signed any papers transferring the  
17 boat to him?  
18 A. No.  
19 Q. You testified that Jeff had taken  
20 off -- when you were at the apartment  
21 complex -- that Jeff had taken off with Scott's  
22 keys?  
23 A. Yes.  
24 Q. Why did Jeff have Scott's keys that

1 night?

2 A. Well, I mean, he didn't have them on  
3 him. They were -- I'm pretty sure, like -- I  
4 always take off my cell phone and my wallet and  
5 stuff and just throw it somewhere in the truck  
6 when we're dirt-biking, just so I know it's in  
7 a safe spot. I'm pretty sure that's what Scott  
8 was doing also. Just never grabbed them.

9 Q. They didn't have any discussion  
10 earlier about --

11 A. No.

12 Q. -- Jeff taking Scott's keys or  
13 anything like that?

14 A. No, no, no.

15 Q. Now, at the time Jeff left the  
16 apartment complex, did you have an  
17 understanding of what his destination was to  
18 be?

19 A. Yes. I mean, he said he was going  
20 home. So I assumed that he was going to  
21 Portsmouth, back to his house.

22 Q. You and Scott were intending to go  
23 back to Harvard?

24 A. Yeah, that's correct.

1 the hall, like, right between the elevator and  
2 the room. We were actually talking. There  
3 was, like -- that weekend, there was a big  
4 festival going on in Fitchburg. The hotel is  
5 right next to the airport.

6 Q. Okay.

7 A. And they have a big rock show. There  
8 was, like, a local bazooka or something, some  
9 sort of concert. And they were -- in, like,  
10 the room next to the room that we were in front  
11 of, that the two kids were staying in, there  
12 was two body -- or two -- they were like  
13 guards, or bodyguards for two -- or a band that  
14 was going to be playing there. And that's  
15 where they got the idea to go to The Other  
16 Side. These guys gave them passes and stuff.  
17 They were there. They were drinking, you know.

18 Q. Excuse me. When you say they gave  
19 him the passes, they gave the passes to who?

20 A. They gave all of us passes.  
21 Actually, I still have one if you want to see  
22 it.

23 Q. Sure.

24 (Pause.)

1 Q. Do you know how long a drive it is  
2 from the apartment complex in Littleton to  
3 Harvard, approximately?

4 A. Um, to Harvard or to, like, the  
5 center, to my house?

6 Q. To your house.

7 A. Twelve minutes maybe, 10 minutes.

8 Q. How far approximately, if you know,  
9 is it from that apartment complex to Portsmouth  
10 where Jeff was going?

11 A. Like an hour and a half.

12 Q. You mentioned that when you were at  
13 the Four Points you saw Jeff with a can of  
14 beer?

15 A. Yes.

16 Q. Do you know where that can of beer  
17 came from?

18 A. Um, no, I don't. I know that we were  
19 standing out right in front of the room that  
20 the two friends of Mike and Todd that were  
21 either from out of town or -- but they were  
22 staying in that room. I kind of thought that,  
23 you know, that they came from their room.

24 I know that we were out in front of

1 A. But the two band bodyguards or  
2 whatever they were, security guards, they  
3 somehow had been in touch with either the owner  
4 or something. And they got free, a bunch,  
5 like, a big -- they had a big stack of free  
6 passes, and they handed them out to everyone.  
7 Jeff, myself, Scott, Mike, everyone that we  
8 were with. This is it (passing document).

9 (Pause.)

10 A. You can keep it if you would like. I  
11 don't need it.

12 Q. That's okay.

13 MR. FARRAH: Why don't we make a  
14 picture of it. In fact, can we take a  
15 five-minute break?

16 MR. SULLIVAN: Sure.

17 (Recess taken.)

18 (Exhibit No. 2 marked for  
19 identification.)

20 Q. So before we took a break, I think  
21 you were telling me how the security people had  
22 given the passes to The Other Side, correct?

23 A. Yes. They were right out with  
24 everyone, you know, the group of us, Scott,

1 myself, Mike, Jeff, you know, the two other  
2 kids -- don't know their names -- and the two  
3 security guards.

4 Q. And we've marked the copy of the pass  
5 that you gave us earlier as Exhibit 2, correct?

6 A. All right.

7 Q. Now, the two kids whose names you  
8 can't remember, do you know why they were  
9 staying at the Four Points?

10 A. No. I know that they were from --  
11 that one of them was -- or at least one of  
12 them -- I'm assuming they're from the same  
13 town -- they're from Vermont. I don't know  
14 really where. I know that they were also  
15 dirt-bikers. No, but I don't know why they  
16 were in town.

17 Q. Do you know if they were friends of  
18 Jeff as well as of Mike Espy?

19 A. Well, no, I don't know the actual  
20 scenario. I know that he seemed comfortable  
21 and didn't see -- didn't greet them and say  
22 Hey, it's nice to meet you. So I kind of  
23 assumed that he knew them.

24 Q. He, being Jeff?

1 A. Yes, yes. But no, I don't -- you  
2 know, they never met, you know, formally  
3 greeted each other or anything. I just assumed  
4 that they knew each other because they were,  
5 you know, everyone sort of knew each other,  
6 except I didn't know them.

7 Q. All right. And at the point that the  
8 decision was made to go from the LongHorn to  
9 the Four Points, what was the reason for going  
10 to the Four Points?

11 A. Well, I know that the two -- the two  
12 people that I don't know, they had to go back  
13 to their room or something. And Todd and Mike  
14 were with them. Like, they drove them to the  
15 LongHorn, or at least Todd drove his car with  
16 them to the LongHorn. Mike was with them.  
17 They came. But he had to bring them back to  
18 the hotel because he brought them there.

19 Q. Okay. That was the only reason for  
20 going to the Four Points, just to drop these  
21 two guys off?

22 A. That I know of.

23 MR. SULLIVAN: That is all I have for  
24 you. Thank you.

1 CROSS EXAMINATION

2 BY MR. LANE:

3 Q. Just a couple of quick questions,  
4 Mr. Conelly. My name is Tom Lane, and I  
5 represent Enterprise Rent-a-Car Company of  
6 Boston, Incorporated. You mentioned that  
7 Mr. Southworth was driving a Dodge Dakota on  
8 this day?

9 A. Yes.

10 Q. Do you have any knowledge as to how  
11 he came to be in possession of that vehicle?

12 A. I know that he rented it. I don't  
13 know, um, you know -- he said -- he called me,  
14 or I talked to him earlier on in the day. He  
15 said, you know, he was coming to go  
16 dirt-biking, you know. I didn't even know that  
17 he had a rental truck. I just figured he had  
18 his truck, or that his truck was in the shop or  
19 something, and that he somehow rented a truck.

20 Q. You learned that his car was in the  
21 shop that day?

22 A. Um, no. I mean, I don't recall. I  
23 kind of, you know, I guess I probably asked  
24 him, said or, you know, someone said, you know,

1 Where is your truck, or something, and he said,  
2 you know -- I remember learning that his car  
3 was in the shop. I just don't exactly remember  
4 when I learned it.

5 Q. Do you recall when you had last gone  
6 dirt-biking with him before this date?

7 A. Not specifically. It was probably  
8 the week before maybe, that weekend before.

9 Q. The last time you had seen him, did  
10 he have his own truck, or did he have the  
11 rental truck?

12 A. He had, yeah, he had his truck.

13 Q. Okay. Is it fair to say that was the  
14 first day you saw him with the rental truck?

15 A. Yes.

16 Q. At some point, you found out that his  
17 car was in the shop?

18 A. Mm-hmm, that's correct.

19 Q. But you don't have any knowledge as  
20 to where he rented the rental truck?

21 A. No. Well, yes. No, I didn't know.

22 Q. Do you know now where he rented it?

23 A. Yes. Enterprise.

24 Q. Is that because of the questions in



1 today's deposition?

2 A. Yes. Well, when I received the  
3 envelope in the mail, that said Enterprise. So  
4 I assume Enterprise.

5 Q. Just so we're clear, the paperwork  
6 referring to your deposition today?

7 A. Yes.

8 Q. Have you given a statement to anyone  
9 about the happening of the accident?

10 A. Yes. I -- it was -- I don't remember  
11 the officer's name. It was the State Police in  
12 Concord. He called me up one day and asked --  
13 said, You need to talk to me about, you know,  
14 Jeff Southworth and what happened that night.  
15 And he said that, I could either come out to  
16 the office or I could go out to Concord. I  
17 said, Sure, I'm coming out.

18 I went out there, and he had me make  
19 a statement, and I wrote it down. First he,  
20 like, had me -- or describe it to him, and then  
21 I wrote it down. And I'm pretty sure that  
22 Scott Espy did the same with the same officer.

23 Q. And that was with the Concord State  
24 Police?

1 for the state that he lived in.

2 Q. Did you ever see that New Hampshire  
3 license at all?

4 A. No.

5 Q. You mentioned before, a little bit,  
6 testifying as to why different people would  
7 drive Mr. Southworth's vehicle. And is it fair  
8 to say your understanding was that he just  
9 didn't want people in Harvard seeing him  
10 driving a car?

11 A. Yes.

12 Q. He never told you that he wasn't  
13 licensed in Massachusetts?

14 A. No.

15 MR. LANE: I have no further  
16 questions.

17 MR. FARRAH: I think I'm done. Thank  
18 you very much for coming in.

19 THE WITNESS: No problem.  
20 (Whereupon, the deposition was  
21 concluded at 11:37 a.m.)  
22  
23  
24

1 A. Yes.

2 Q. Is that the only statement you've  
3 ever given about this incident?

4 A. Yes.

5 Q. You testified in front of the grand  
6 jury?

7 A. Yes.

8 Q. Have you testified anywhere else  
9 about this incident?

10 A. No.

11 Q. Have you ever spoken to any insurance  
12 representatives at all about the incident?

13 A. No.

14 Q. Do you have any knowledge -- I know  
15 Mr. Farrah asked you about Mr. Southworth's  
16 Massachusetts license. Do you have any  
17 knowledge that he had a New Hampshire license  
18 to operate motor vehicles?

19 A. No. Well, I mean, I don't have  
20 any -- no. I mean, I assume he did.

21 Q. Okay. Why did you assume that he had  
22 a New Hampshire license?

23 A. Well, he lived in New Hampshire, and  
24 so I kind of assumed that he'd have a license

1 SIGNATURE PAGE/ERRATA SHEET  
2 Re: Nancy Rosario, et al.  
3 Vs: Jeffrey Southworth, et al.  
4 08/19/04: Deposition of Jude P. Conelly

5 I, JUDE P. CONELLY, do hereby certify  
6 that I have read the foregoing transcript of my  
7 testimony and that it is a true and accurate  
8 record of my testimony (with the exception of  
9 the corrections listed below):

10 Page Line Correction

10	---	---	_____
11	---	---	_____
12	---	---	_____
13	---	---	_____
14	---	---	_____
15	---	---	_____
16	---	---	_____
17	---	---	_____
18	---	---	_____
19	---	---	_____

20  
21 Signed under the pains and penalties of  
22 perjury this \_\_\_ day of \_\_\_\_\_,  
23 2004.  
24

JUDE P. CONELLY

## 1 CERTIFICATE

2 Commonwealth of Massachusetts  
3 Suffolk, ss.4 I, Alene M. Jennette, Certified Shorthand  
5 Reporter and Notary Public in and for the  
6 Commonwealth of Massachusetts, do hereby  
7 certify that JUDE P. CONELLY, the witness whose  
8 deposition is hereinbefore set forth, was duly  
9 sworn by me and that such deposition is a true  
10 record of the testimony given by the witness.11 I further certify that I am neither related  
12 to or employed by any of the parties in or  
13 counsel to this action, nor am I financially  
14 interested in the outcome of this action.15 In witness whereof, I hereunto set my hand  
16 and seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

17

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\_\_\_\_\_  
Notary Public, CSR  
My commission expires:  
April 9, 2010

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\*\*\*\*\*  
NANCY ROSARIO, INDIVIDUALLY, AS \*  
SHE IS THE ADMINISTRATRIX OF THE \*  
ESTATE OF AWILDA SANTIAGO, ESSEX \*  
PROBATE COURT #03P-2499AD1, P/P/A \*  
VERONICA ROSARIO AND CHRISTINA \*  
SANTIAGO, AND AS SHE IS THE \*  
ADMINISTRATRIX OF THE ESTATE OF \*  
JOSE SANTIAGO, BERLIN (CONNECTICUT) \*  
PROBATE COURT, CASE #03-0713, \*  
Plaintiff, \*  
VS. \* C.A. No.  
RARE HOSPITALITY INTERNATIONAL, \* 05-CV-10617MLW  
INC. d/b/a LONGHORN STEAKHOUSE, \*  
Defendant \*

\*\*\*\*\*  
DEPOSITION OF JUDE CONNELLY, a witness

called on behalf of the Plaintiff, taken

pursuant to Notice under the applicable

provisions of the Federal Rules of Civil

Procedure, before Barbara J. Simon, a

Professional Shorthand Reporter and Notary

Public, in and for the Commonwealth of

Massachusetts, at the law offices of Albert L.

Farrah, Jr., One Washington Mall, Boston,

Massachusetts, on Friday, February 10, 2006,

commencing at 10:15 a.m.

SHEA COURT REPORTING SERVICES  
(617) 227-3097

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APPEARANCES

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Also Present:  
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PROCEEDINGS

JUDE CONNELLY, having been satisfactorily identified and duly sworn, on oath, deposes and says as follows:

DIRECT EXAMINATION

BY MR. FARRAH:

Q. Just for the record, could you tell us your name, please?

A. Jude Connelly.

Q. Mr. Connelly, my name is Albert Farrah and I represent the plaintiff, Nancy Rosario, in various capacities in this lawsuit.

Counsel have agreed that you will have a copy of your transcript delivered to you and that you will have thirty days from the date of your receipt of that transcript to note, in writing on a sheet of paper that will accompany the transcript, any errors that you feel were made in the transcription of your testimony, and you'll need to return that errata sheet to me within thirty days of your receipt in order

1 for the notations to have any effect in this  
 2 case.  
 3 Otherwise, your transcript will be deemed  
 4 accurate if we don't receive that back from you  
 5 within thirty days -- the errata sheet. Do you  
 6 understand that?  
 7 A. Yes.  
 8 Q. Tell us, please, where you live.  
 9 A. Harvard, Massachusetts.  
 10 Q. What is the address?  
 11 A. Fifteen Lovers Lane.  
 12 Q. And how old are you?  
 13 A. I am twenty years old.  
 14 Q. What is your date of birth, sir?  
 15 A. March 23, 1985.  
 16 Q. And are you currently in school?  
 17 A. I am.  
 18 Q. Where?  
 19 A. Fitchburg State College.  
 20 Q. Is that full time?  
 21 A. Full time.  
 22 Q. And do you work?  
 23 A. Yes.  
 24 Q. Where do you work?

1 A. Yes.  
 2 Q. Was that on September 26, 2003?  
 3 A. Yes, I believe so.  
 4 Q. Calling your attention to that day, September  
 5 26, 2003, do you recall where you were dirt  
 6 biking with Mr. Southworth that day?  
 7 A. I do.  
 8 Q. Where was that?  
 9 A. It was in Templeton, Massachusetts.  
 10 Q. Is there a particular location at Templeton  
 11 that you were dirt baking? Does it have a  
 12 name?  
 13 A. It doesn't have a name. It is just a sand pit,  
 14 if you want to call it that.  
 15 Q. A sand pit?  
 16 A. Yes.  
 17 Q. Do you know what time you arrived at the sand  
 18 pit that day?  
 19 A. Early afternoon, maybe 2:00, 3:00.  
 20 Q. How did you get there that day?  
 21 A. I went to Templeton with my brother.  
 22 Q. What is your brother's name?  
 23 A. Dylan Connelly.  
 24 Q. And when you arrived at the sand pit that day,

1 A. I work at a small convenience store in Bolton.  
 2 Q. What is the name of that store?  
 3 A. Country Cupboard.  
 4 Q. Calling your attention back to the year 2003,  
 5 did you know a person named Jeffrey Southworth?  
 6 A. Yes.  
 7 Q. Can you tell us approximately when it was that  
 8 you first met Mr. Southworth?  
 9 A. I believe it was some time in the summer of  
 10 2002.  
 11 Q. Do you know the setting, where you met him?  
 12 A. Not particularly.  
 13 Q. During the summer of 2003, did Mr. Southworth  
 14 and you engage in any dirt biking activities  
 15 together?  
 16 A. Yes.  
 17 Q. Can you tell me approximately how many times  
 18 during the summer of 2003 Mr. Southworth and  
 19 you were dirt biking together?  
 20 A. I would say about a dozen times.  
 21 Q. And on one of those occasions after dirt  
 22 biking, did Mr. Southworth and you go to the  
 23 Longhorn Steakhouse in Leominster,  
 24 Massachusetts?

1 was Jeffrey Southworth there?  
 2 A. No, he was not.  
 3 Q. At some point in time, did he arrive at the  
 4 sand pit? Did you see him there?  
 5 A. Yes.  
 6 Q. And by the way, if you just nod, we won't have  
 7 a record of your answers. So you need to say  
 8 your answer.  
 9 When you first saw him, was he in the  
 10 company of anyone else?  
 11 A. Yes.  
 12 Q. Who was that?  
 13 A. Scott Espy.  
 14 Q. Did you know Mr. Espy prior to September 26,  
 15 2003?  
 16 A. I did.  
 17 Q. Did you know him in a dirt biking setting?  
 18 A. I did.  
 19 Q. And others?  
 20 A. Yes.  
 21 Q. For how long did you remain dirt biking at the  
 22 sand pit in Templeton that day?  
 23 A. We were there until about dark, although I  
 24 stopped dirt biking a little bit before.



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Page 11

1 Q. Before what?

2 A. Before Jeff and Scott finished. My brother

3 actually took my dirt bike with him back to

4 school when he left.

5 Q. So you said you arrived with your brother, and

6 did you arrive in your brother's motor vehicle?

7 A. Yes.

8 Q. And did your brother leave Templeton, the sand

9 pit, at some point in time that day?

10 A. Yes.

11 Q. When did he leave, approximately?

12 A. Around 6:00.

13 Q. And did he take your dirt bike with him that

14 day when he left around 6:00?

15 A. Yes.

16 Q. So you stopped dirt biking at that point; is

17 that right?

18 A. Yes.

19 Q. At what time did Mr. Southworth stop dirt

20 biking?

21 A. It was right around when it got dark. I don't

22 specifically remember.

23 Q. And at some point in time, did you leave the

24 Templeton sand pit that day?

Page 10

1 A. We did.

2 Q. And did you leave in the company of anybody?

3 A. I left with Jeff and Scott.

4 Q. And approximately when was it that you left?

5 A. I know it was just getting dark or just shortly

6 after, maybe around 7:00.

7 Q. And prior to leaving the sand pit in Templeton,

8 did you see Jeffrey Southworth have any

9 alcoholic beverages?

10 A. No.

11 Q. Did all of you leave the sand pit together --

12 Jeffrey Southworth, Mr. Espy and yourself?

13 A. We did.

14 Q. And in whose motor vehicle did you leave the

15 sand pit?

16 A. It was Jeff's. I believe it was a rented

17 truck.

18 Q. And where did the three of you go?

19 A. We went to the Longhorn Steakhouse.

20 Q. And were there any other persons in the motor

21 vehicle, the rented truck, other than Jeff

22 Southworth, Mr. Espy and yourself, on the trip

23 from the sand pit to the Longhorn Steakhouse?

24 A. No, there were not.

1 Q. Were there any pets in that motor vehicle?

2 A. There were. There were two dogs.

3 Q. Whose dogs were they?

4 A. They were Jeff's.

5 Q. And what was the layout of people and pets in

6 the motor vehicle on the trip from the sand pit

7 to the Longhorn Steakhouse?

8 A. I believe I was sitting in the back with the

9 two dogs, and Jeff and Scott were in the front.

10 Q. Who was driving?

11 A. Jeff was.

12 Q. And at approximately what time did you arrive

13 at the Longhorn Steakhouse?

14 Let me ask the question another way.

15 Approximately, how long did it take you to get

16 to the Longhorn Steakhouse from Templeton?

17 A. About half an hour.

18 Q. And when you arrived at the Longhorn

19 Steakhouse, where did you go? Where did you

20 first go?

21 A. We went in and we put our name in for a table,

22 and it was busy. So we went over to the bar to

23 wait for the table.

24 Q. That was the three of you -- Jeff, yourself and

Page 12

1 Mr. Espy?

2 A. Correct.

3 Q. At the bar, did you see Mr. Southworth drinking

4 at all?

5 A. I did.

6 Q. What did you see him drinking?

7 A. I saw him drinking a beer.

8 Q. And do you know how many beers Mr. Southworth

9 had at the bar that day?

10 A. I remember him having one.

11 Q. Do you remember testifying at a deposition in

12 this case or in a related case back in August

13 of 2004?

14 A. I do.

15 Q. And do you remember being asked the question --

16 Let me show you the bottom here on page 28 at

17 Line 22.

18 "Do you know whether or not Jeff had more

19 than one beer while he was at the bar?"

20 Do you see that question?

21 A. Yes, I do.

22 Q. Do you remember that your answer was, "You

23 know, I think he did. I'm not -- I don't know

24 for a fact but, you know, he probably did."

Page 13

Page 15

1 Do you see that?

2 A. I see that.

3 Q. So is it your best memory today that he

4 probably had more than one beer while he was

5 drinking at the bar?

6 MR. GILLIS: Objection.

7 A. I don't know. I don't remember. I remember

8 him ordering one beer.

9 Q. Do you have any explanation for why you

10 testified on August 19, 2004 that he probably

11 had more than one beer?

12 MR. GILLIS: Objection. That's not his

13 testimony.

14 He said on 28 he had a beer, and then you

15 asked him further when you were unhappy with

16 the answer, and he said "maybe."

17 His testimony isn't ever that he had more

18 than one beer.

19 MR. FARRAH: His testimony is his

20 testimony, and his testimony is in response to

21 the question, "Do you know whether or not Jeff

22 had more than one beer while he was at the

23 bar?"

24 His testimony is, "You know, I think he

1 know whether or not Jeff had more than one beer

2 while he was at the bar?"

3 The answer is, "You know, I think he did."

4 So my question --

5 MR. GILLIS: What page are you on?

6 MR. FARRAH: I'm on page 28.

7 MR. GILLIS: Line?

8 MR. FARRAH: 22.

9 MR. GILLIS: Again, I object. If you're

10 going to ask him a question, ask him to read

11 the whole page because you're just taking

12 things out of context.

13 Q. For the third time, can you explain why you

14 testified back in August of 2004 that you

15 thought Jeff had more than one beer while he

16 was at the bar?

17 A. I guess I said it because I think it could have

18 been possible.

19 Q. Can you explain why in August of 2004 you

20 testified that he probably -- on top of page

21 29 -- that he probably had more than one beer

22 while he was at the bar?

23 MR. GILLIS: Objection.

24 Q. You can answer.

Page 14

Page 16

1 did. I'm not -- I don't know for a fact, but,

2 you know, he probably did."

3 MR. GILLIS: That's taken out of context.

4 You're not bringing the whole statement in on

5 28 when you asked him, "What did you see him

6 drinking?" He said "A beer."

7 If you're going to ask him a question,

8 give him the whole sequence. Don't take it out

9 of order.

10 MR. FARRAH: Motion to strike. You can

11 ask him what you want to ask him.

12 Q. My question to you is, do you have any

13 explanation for why you testified on August 19,

14 2004 that you think he had more than one beer

15 at the bar?

16 MR. GILLIS: Where did you say he said he

17 thinks he had more than one beer at the bar?

18 MR. FARRAH: I'm looking at 22 through 24.

19 MR. GILLIS: 22 to 23 is a question.

20 Maybe I'm missing something. On page 29, Lines

21 21 to 24 I don't see anywhere -- What line are

22 you saying that he said he had more than one

23 beer as opposed to you asking a question?

24 Q. On page 28, Line 22, the question is, "Do you

1 A. I don't.

2 Q. Fair enough. At some point in time, were you

3 seated at a table?

4 A. Yes, we were.

5 Q. And by the way, while you were at the bar, how

6 far away were you from Jeff?

7 A. I don't remember.

8 Q. Do you remember what part of the bar you were

9 seated at or standing at?

10 A. Not particularly. I kind of remember it being

11 somewhat busy and us not having seats.

12 Q. But you don't remember what section of the bar?

13 A. I don't.

14 Q. I'm going to show you what has been marked as

15 Exhibit 1 in your earlier deposition.

16 Do you recall looking at that floor plan

17 at some point in time?

18 A. Yes.

19 Q. Do you recall circling the area where the "3"

20 is located as the area where Jeff, you and

21 Mr. Espy were at the bar?

22 A. Yes.

23 Q. Does that refresh your memory about what part

24 of the bar the three of you were at on that

Page 17

Page 19

1 night?

2 A. It does.

3 Q. Is it accurate to say that you were at the area

4 circled with a "3" and an arrow pointing to it

5 on Exhibit 1 of your earlier deposition?

6 A. Yes.

7 MR. FARRAH: Can we mark that as Number 1

8 in this deposition?

9

10 (Exhibit Number 1 was marked for

11 identification.)

12

13 Q. Do you recall what the bartender or bartenders

14 who served you at the bar looked like that

15 night?

16 A. I don't.

17 Q. Do you remember testifying that it was a woman,

18 you thought, with blonde hair who had served

19 you that night?

20 A. I don't know whether she was at the bar or

21 serving a table. I remember a female that I

22 thought had blonde hair.

23 Q. Could you turn to page 31? Read the first

24 seven or eight lines of page 31 to yourself.

Page 18

1 (Witness reviews document.)

2 A. Okay.

3 Q. Does that refresh your recollection that it was

4 a blonde woman who waited on you at the bar?

5 A. I don't remember. I mean, I guess so.

6 Q. Okay. For the record, you were asked the

7 question --

8 MR. GILLIS: For the record, we want an

9 accurate transcript. So we'd prefer your best

10 memory, but if you're guessing, please don't do

11 that.

12 Neither Mr. Farrah nor I want you to guess

13 at answers you don't know.

14 A. I honestly don't remember.

15 Q. Do you recall testifying that you thought the

16 woman who served you at the bar had blonde

17 hair; is that right?

18 MR. GILLIS: Objection. I think his

19 testimony was that he didn't specifically

20 remember.

21 Q. "I think she has blonde hair," is what it says

22 there. "I just remember seeing blonde hair."

23 MR. GILLIS: Read the whole answer. His

24 testimony isn't that he saw a woman with blonde

1 hair.

2 His testimony is, "I don't remember. I

3 just remember seeing blonde hair." Read the

4 whole answer.

5 MR. FARRAH: For the record, "Do you know

6 who served Jeff at the bar?"

7 "Answer: I mean, the bartender I remember

8 it was a girl?"

9 "Question: Woman? Women?"

10 "Answer: Yes. I don't specifically

11 remember. I think she had blonde hair. I just

12 remember seeing blonde hair."

13 Q. By the way, is it your best memory as you sit

14 here now that while he was at the bar, Jeffrey

15 Southworth had more than one beer?

16 MR. GILLIS: Objection, asked and

17 answered.

18 Q. You can answer.

19 MR. GILLIS: If you know.

20 Q. Read on page 30 the question that begins on

21 Line 15 to yourself and then your answer.

22 (Witness reviews document.)

23 Q. I want to ask you this question. Is it your

24 best memory as you sit here now that while he

Page 20

1 was at the bar, Jeff Southworth had more than

2 one beer?

3 MR. GILLIS: Objection.

4 A. No.

5 Q. Do you recall that you were asked that question

6 at your deposition?

7 A. Yes.

8 Q. And that your answer at that time was, "I'd say

9 so, yes"?

10 A. Yes.

11 Q. Do you have any explanation for why your answer

12 today is different from your testimony back in

13 August of 2004?

14 A. To be honest with you, after looking at the

15 receipt for the bill, I'm pretty sure that

16 there could be no way that he had more than one

17 beer at the bar.

18 Q. Did you see the receipt for the bar?

19 A. I believe the bill for the bar was with the

20 bill for the table.

21 Q. What makes you say that?

22 A. That's as I remember that.

23 Q. When did you see the receipt for the bill?

24 A. Maybe a month ago.

1 Q. Where did you see it?

2 A. When I met with John DiNatale.

3 Q. A private investigator?

4 A. Yes.

5 Q. What did Mr. DiNatale say to you?

6 A. He just wanted to go over what I had said in

7 some of the depositions and show me the receipt

8 for the bar, and just tell me when I come in

9 here to tell the truth and if I don't know the

10 answer, don't speculate; just only say what I

11 know.

12 Q. Okay, and you didn't speculate when you

13 testified at your deposition, did you?

14 MR. GILLIS: Objection. The prior one

15 you're referring to?

16 MR. FARRAH: Either deposition.

17 A. I suppose I may have.

18 Q. You speculated at your deposition?

19 A. Well, I don't think I was making things up, but

20 when I say I don't exactly remember, this could

21 have been the case.

22 I remember one thing, but certainly

23 another thing could have happened.

24 Q. When you testified on August 19, 2004, you were

1 sworn to tell the truth before you testified;

2 isn't that right?

3 A. Yes.

4 Q. Okay, and you did the best you could to tell

5 the truth at that time; isn't that right?

6 A. Yes.

7 Q. Since that time, Mr. DiNatale has seen you; is

8 that right?

9 A. Yes.

10 Q. Did he tell you who he was working for?

11 A. I can't remember. I know he is working for one

12 of the sides -- one of the law firms.

13 Q. How long did you spend with Mr. DiNatale?

14 A. Maybe twenty minutes.

15 Q. And he showed you some records?

16 A. Yes.

17 Q. What did he show you?

18 A. He showed me the printout when I was at the

19 grand jury.

20 Q. The printout of the bill at the grand jury for

21 the Longhorn?

22 A. He showed me a printout of the receipt, and

23 also when I went into the grand jury in Lowell

24 before the grand jury.

1 Q. You gave some testimony?

2 A. Yes.

3 Q. He showed you that?

4 A. Yes.

5 Q. Was that accurate?

6 A. Yes.

7 Q. Was your deposition accurate in August of 2004?

8 MR. GILLIS: Which part? You asked the

9 same question at the deposition five times, and

10 you kept asking it because you didn't like the

11 answer.

12 So if you're going to ask him if it's

13 accurate, which time? The time when he said he

14 had only one beer or the time you asked him

15 three pages later?

16 Q. Was your deposition accurate?

17 MR. GILLIS: Which part?

18 MR. FARRAH: Any part.

19 A. I believe so, yes.

20 MR. FARRAH: Now, I just want to stop for

21 a second. I'll be right back. I want the

22 receipt of what Mr. DiNatale showed you.

23 (Off the record.)

24 Q. Back on the record. Back to Mr. DiNatale, did

1 he tell you who he was working for?

2 A. He did. I know he's working for one of the law

3 firms. I don't know.

4 Q. Did he tell you he was working for Mr. Gillis's

5 firm? That is the gentleman sitting next to

6 you.

7 A. I suppose he did. I honestly don't remember

8 which firm he said he was working for.

9 Q. Before you testified in August of 2004, had any

10 investigators, other than police investigators,

11 spoken to you about your upcoming testimony?

12 A. No.

13 Q. So when you went into that testimony, you

14 didn't have the benefit of anybody's assistance

15 in preparing for the deposition; is that right?

16 MR. GILLIS: Objection.

17 A. Yes.

18 Q. But Mr. DiNatale knew that you were coming to

19 be deposed in this case; isn't that right?

20 MR. GILLIS: Objection.

21 A. Yes.

22 Q. He told you to tell the truth at the

23 deposition; isn't that right?

24 MR. GILLIS: Objection.



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Page 27

1 A. Yes.  
 2 Q. And he showed you some documents; is that  
 3 right?  
 4 A. Yes.  
 5 Q. One of the documents he showed you was a  
 6 printout of the bar check; is that right?  
 7 A. That's right.  
 8 Q. I want you to look at this document which is  
 9 Exhibit 11 in the Kristin O'Donnell deposition.  
 10 It's a few page document. I'd like you to look  
 11 at it, if you could. Take a moment.  
 12 (Witness reviews document.)  
 13 Q. It's Table 52; is that right? Take as long as  
 14 you need to look at it to familiarize yourself  
 15 with the document.  
 16 (Witness reviews document.)  
 17 Q. Is that the document that Mr. DiNatale showed  
 18 you when you met with him?  
 19 A. I think so, yes.  
 20 MR. FARRAH: That, for the record, is  
 21 Exhibit 11 to Ms. O'Donnell's deposition.  
 22 Why don't we mark it as Exhibit 2 to this  
 23 deposition?  
 24

Page 26

Page 28

1 (Exhibit Number 2 was marked for  
 2 identification.)  
 3  
 4 Q. Was it just Mr. DiNatale and you who met, and  
 5 nobody else?  
 6 A. Correct.  
 7 Q. Where did you meet with him?  
 8 A. He came to my house.  
 9 Q. He had called you beforehand to arrange that  
 10 meeting?  
 11 A. Yes.  
 12 Q. Your best memory of when the meeting happened  
 13 is when?  
 14 A. I believe it was around a month ago.  
 15 Q. He gave you his card?  
 16 A. Yes.  
 17 Q. Do you still have it?  
 18 A. Not on me, but I do have it.  
 19 Q. Do you remember his first name?  
 20 A. I think it's John.  
 21 Q. And you and he discussed what now has been  
 22 marked as Exhibit 2 in your deposition; is that  
 23 right?  
 24 A. Yes.

1 Q. Based in part on that discussion, you now do  
 2 not believe that Jeff Southworth had more than  
 3 one beer at the bar; is that right?  
 4 MR. GILLIS: Objection.  
 5 A. Correct.  
 6 Q. That's because there's something in Exhibit 2  
 7 that suggests to you that it was an  
 8 impossibility that he had more than one beer at  
 9 the bar?  
 10 MR. GILLIS: Objection.  
 11 Q. Is that right?  
 12 A. Yes.  
 13 Q. What is it about that that Mr. DiNatale pointed  
 14 out to you in Exhibit 2?  
 15 MR. GILLIS: Objection. You're putting in  
 16 evidence that's not there. You're saying what  
 17 did he point to, and there's no evidence here  
 18 that he pointed to anything.  
 19 You can't lead the witness. It's your  
 20 deposition.  
 21 Q. Did Mr. DiNatale point to something in  
 22 Exhibit 2 that led you to conclude that it was  
 23 impossible for Jeff to have had more than one  
 24 beer at the bar?

1 A. He asked me what I remembered him having at the  
 2 bar, and I told him that I remembered him  
 3 having a beer.  
 4 It was a possibility that he could have  
 5 had more, and I told him I remembered Scott  
 6 having a beer as well, and at that point he  
 7 said, "There were only two beers ordered. So  
 8 where did the third beer come from," and I  
 9 said, "I guess it didn't come."  
 10 Q. Did Mr. DiNatale show you where there were only  
 11 two beers ordered as reflected in what has now  
 12 been marked as Exhibit 2 in your deposition?  
 13 A. Yes.  
 14 Q. Could you show me what he pointed to?  
 15 A. There's one at the top of what says page 8, and  
 16 the second one is towards the end of page 9  
 17 right here.  
 18 Q. The one at the top of page 8 -- You said  
 19 page 8?  
 20 A. Yes.  
 21 Q. Is that the very top line on page 8?  
 22 A. It is.  
 23 Q. It says "\$3.99, twenty-five-ounce Bud Light"?  
 24 A. Correct.

Page 29

Page 31

1 Q. And to review that, you need to go to the  
2 previous page; is that right?  
3 A. Yes.  
4 Q. That's part of an order that was placed at  
5 8:40 p.m.; is that right?  
6 A. Yes.  
7 Q. So that's one of the references that  
8 Mr. DiNatale pointed out to you about the  
9 beers; is that right?  
10 A. Yes.  
11 Q. And the other reference that Mr. DiNatale  
12 pointed out to you, I think you said was on  
13 page 9; is that right?  
14 A. Towards the end.  
15 Q. Again, we're looking at Exhibit 2 to your  
16 deposition; is that right?  
17 A. Yes.  
18 Q. Do you see it?  
19 A. Yes.  
20 Q. It looks like at 9:15 p.m. there was an order  
21 for a \$3.99 twenty-five-ounce Bud Light?  
22 A. Yes.  
23 Q. So based on Mr. DiNatale showing you the  
24 earlier reference at 8:40 p.m. and the second

1 MR. GILLIS: You're asking him to guess  
2 because you don't want the accurate testimony.  
3 I'm just telling him to tell the truth.  
4 If you have a problem with that, then fine.  
5 MR. FARRAH: I have no problem with that.  
6 I'm trying to find out what Mr. DiNatale said  
7 at a later date.  
8 Q. What did Mr. DiNatale tell you about the beer  
9 at 8:40 and the beer at 9:15? What did he tell  
10 you?  
11 A. He told me those were the two beers of the  
12 bill.  
13 Q. Did he say what they meant and what they  
14 reflected?  
15 A. He just said those are reflected, the two beers  
16 that they were drinking.  
17 Q. At the bar?  
18 MR. GILLIS: Objection.  
19 A. I don't know.  
20 Q. Did he say that the two beers that are  
21 reflected on Exhibit 2 to your deposition were  
22 two beers that were served at the bar?  
23 MR. GILLIS: Objection.  
24 A. I don't remember.

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Page 32

1 reference at 9:15 p.m., you now understand that  
2 it was not possible for Jeff to have had more  
3 than one beer at the bar; is that right?  
4 MR. GILLIS: Objection.  
5 A. I believe so.  
6 Q. Did Mr. DiNatale tell you that what's been  
7 marked as Exhibit 2 to your deposition included  
8 the bill for the beers that were served at the  
9 bar to Jeff and Mr. Espy?  
10 A. He didn't say whether they were or weren't.  
11 Q. Well, if you can tell me what it is about  
12 Exhibit 2 that Mr. DiNatale pointed out to you  
13 that suggested to you that the two beers we've  
14 been talking about, 8:40 and 9:15, were the  
15 beers that were served to them at the bar?  
16 MR. GILLIS: Objection.  
17 A. The fact that I just remember the bar tab being  
18 carried over to the table. I mean, it's  
19 obvious that they're different times, I guess.  
20 I don't know.  
21 Q. I want to know.  
22 MR. GILLIS: If you don't know, say you  
23 don't know, but don't guess.  
24 MR. FARRAH: This is not your witness.

1 Q. Is it accurate to say that you're basing your  
2 testimony that Jeff probably did not have more  
3 than one beer at the bar on Exhibit 2 that  
4 Mr. DiNatale showed you?  
5 MR. GILLIS: Objection.  
6 A. Solely or entire? Can you repeat it one more  
7 time?  
8 Q. Yes.  
9 A. I remember him having a beer at the bar, but  
10 that was at the bar. I remember him having one  
11 beer, you know, throughout the night.  
12 I remember him having a beer, but whether  
13 he ordered another beer, which I don't remember  
14 or not, at the table, that would not be at the  
15 bar.  
16 Q. Do you remember testifying that at the table  
17 Jeff had probably four beers?  
18 MR. GILLIS: Objection.  
19 A. I believe I did. I mean, I think I read that  
20 somewhere.  
21 Q. Your memory of the events back in August of '04  
22 was better than your memory of the events  
23 today; isn't that right?  
24 MR. GILLIS: Objection.

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Page 35

1 A. I guess you can say that.  
 2 Q. And back in August of '04 on Page 38, Line 4 of  
 3 your deposition began a series of questions  
 4 that you were asked about Jeff drinking at the  
 5 table.  
 6 Do you recall being asked the question,  
 7 "While you were at the table, did you see Jeff  
 8 drinking any alcoholic beverages?"  
 9 Do you recall that?  
 10 A. Yes.  
 11 Q. And your answer was, "Yes."  
 12 Did you see him drinking any beers?  
 13 A. Yes.  
 14 Q. How many beers, to your best memory, did you  
 15 see him drink at the table?  
 16 A. Do you want me to read off of this?  
 17 Q. Tell me, first of all, what you testified to  
 18 back in August.  
 19 A. I answered "Maybe four, maybe."  
 20 Q. My question to you today is, did you see him  
 21 drinking beers at the table?  
 22 A. I know that he had a beer at the table.  
 23 Q. Do you know if he had more than one beer at the  
 24 table?

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1 A. I don't know.  
 2 Q. Do you have any explanation for why back in  
 3 August of 2004 you testified that your best  
 4 memory was he had maybe four beers at the  
 5 table?  
 6 A. I mean anything is possible. I know that he  
 7 had a beer, but I guess it's possible that he  
 8 could have had more beers.  
 9 Q. You testified that he had maybe four beers;  
 10 isn't that right?  
 11 A. Correct. That would be why, the possibility of  
 12 why I said that.  
 13 Q. Now, prior to your August 2004 testimony,  
 14 nobody had spoken to you about your upcoming  
 15 testimony; isn't that right?  
 16 A. Right.  
 17 Q. Prior to today's testimony, Mr. DiNatale had  
 18 spoken to you; isn't that right?  
 19 A. Yes.  
 20 Q. Did you discuss the question of how many beers  
 21 to the best of your memory did you see him  
 22 drink at the table, with Mr. DiNatale?  
 23 A. No.  
 24 Q. Did you understand that Mr. DiNatale was

1 working for the lawyers who are representing  
 2 the Longhorn Steakhouse?  
 3 MR. GILLIS: Objection.  
 4 A. At that time, yes.  
 5 Q. He told you that; isn't that right?  
 6 A. Yes.  
 7 Q. And while he was at the table, did you also see  
 8 Jeff drinking Manhattans?  
 9 A. Yes.  
 10 Q. How many Manhattans did you see him drink at  
 11 the table?  
 12 A. I remember him having at least a Manhattan. As  
 13 of right now, I don't know what I testified to.  
 14 Q. Let's read it. Do you see the question  
 15 beginning on page 38, Line 16? Let me read the  
 16 question.  
 17 It says, "What is your best memory of the  
 18 number of Manhattans that you saw him drinking  
 19 at the table?"  
 20 What was your answer?  
 21 A. "Probably two. I know that he ordered like a  
 22 round of them. I don't, you know, I don't  
 23 really remember how many. I think, you know,  
 24 I'd probably say two."

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1 Q. Do you remember giving a statement to the  
 2 police after the investigation or after the  
 3 accident?  
 4 A. Yes.  
 5 Q. And you had not spoken to Mr. DiNatale before  
 6 you gave that statement; isn't that right?  
 7 A. Correct.  
 8 Q. And nobody had talked to you, other than the  
 9 police, about what Jeff had to drink at the  
 10 restaurant; is that right?  
 11 A. Correct.  
 12 Q. Now, let me ask you this. Is there any  
 13 question in your mind about that when Jeff and  
 14 Mr. Espy and you first arrived at the  
 15 restaurant, you went to the bar?  
 16 A. Okay.  
 17 Q. Is there any question in your mind about that?  
 18 A. I know we went to the bar.  
 19 Q. You didn't have anything to drink that night --  
 20 alcoholic beverages -- did you?  
 21 A. No.  
 22 Q. And is there any question in your mind about  
 23 that both Jeff and Mr. Espy when they went to  
 24 the bar, they ordered a beer upon arrival at

1 the bar?

2 A. No.

3 Q. That happened; is that right?

4 A. Correct.

5 Q. And they made that order at the same time; is

6 that right?

7 A. As best as I can remember. I can't

8 specifically recall them both saying, you know,

9 the time when they said, "Can I have a beer?"

10 Q. But the three of you were in the bar area for

11 some period of time before the others in your

12 group arrived; isn't that right?

13 A. Yes.

14 Q. Fifteen or twenty minutes?

15 A. Yes.

16 Q. And during that fifteen or twenty minutes, it

17 was just the three of you at the bar; isn't

18 that right?

19 A. Correct.

20 Q. And they were drinking beer at the bar; isn't

21 that right?

22 A. Correct.

23 Q. So when you were talking to Mr. DiNatale about

24 your testimony at your August 2004 deposition

1 and he showed you this Exhibit 2 to your

2 deposition, did you have any discussion with

3 him about the times that the beers were shown

4 to have been ordered on Exhibit 2?

5 A. No, other than him pointing out just the two

6 beers were ordered. We didn't discuss anything

7 further.

8 Q. But you understood that the bar tab was on

9 Exhibit 2; isn't that right?

10 MR. GILLIS: Objection.

11 A. Yes.

12 Q. Mr. DiNatale told you that; isn't that right?

13 MR. GILLIS: Objection.

14 A. I don't know. I don't believe so.

15 Q. What then was the basis for your understanding

16 that the bar tab is on Exhibit 2?

17 A. Me recalling that the bar -- whatever the bill

18 at the bar was -- they just asked for it to be

19 brought to the table.

20 I don't specifically remember them paying

21 the tab at the bar.

22 Q. That's the sole basis for your statement that

23 the bar tab is on Exhibit 2?

24 A. Yes.

1 Q. Mr. DiNatale didn't tell you that the bar tab

2 was on Exhibit 2, did he?

3 A. No.

4 Q. But he pointed to the two beers on Exhibit 2,

5 didn't he?

6 A. Yes.

7 Q. What did he say about them?

8 A. He said those were the two beers that were

9 ordered.

10 Q. Ordered at the bar?

11 MR. GILLIS: Objection.

12 A. He didn't say or he may have said. I don't

13 remember. I remember him saying those are the

14 two beers that they were drinking.

15 Q. Mr. DiNatale was not at the Longhorn Steakhouse

16 the night of September 26 to the best of your

17 memory; isn't that right?

18 A. Correct.

19 Q. Did you see Jeff drinking beer while he was at

20 the table?

21 A. Yes.

22 Q. And how many beers did you see Jeff drinking

23 while he was at the table?

24 A. I remember him having a mug in front of him.

1 Q. The same size at the table that he had had at

2 the bar?

3 A. Yes.

4 Q. The same beer perhaps at the table that he had

5 had at the bar?

6 A. Yes.

7 Q. And the same kind of beer?

8 A. Yes.

9 Q. And how many drinks of Jack Daniels did Jeff

10 have at the table?

11 A. I remember seeing him have at least one. After

12 seeing this, it's clear that it looks like he

13 had two --

14 MR. GILLIS: Objection.

15 A. -- if the rounds were ordered.

16 Q. Did Mr. DiNatale and you discuss how many Jack

17 Daniels Manhattans are reflected on Exhibit 2?

18 A. Yes.

19 Q. How many are reflected on Exhibit 2?

20 A. I can't remember. I need to count them.

21 Q. Do you remember other people drinking Jack

22 Daniels Manhattans as well?

23 A. Yes.

24 Q. And so my question to you is, what is your best



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1 memory of the number of Manhattans that you saw  
 2 Jeff drinking at the table?  
 3 MR. GILLIS: Objection, already asked and  
 4 answered.  
 5 A. Two.  
 6 Q. What is your best memory of the number of beers  
 7 you saw Jeff drinking at the table?  
 8 MR. GILLIS: Objection.  
 9 A. One.  
 10 Q. And can we agree that your best memory of the  
 11 number of beers you remember him drinking at  
 12 the table in 2004 was four?  
 13 MR. GILLIS: Objection. That's not what  
 14 the answer says.  
 15 Q. Maybe four?  
 16 MR. GILLIS: Objection.  
 17 A. I testified to that.  
 18 Q. Before you saw Mr. DiNatale?  
 19 MR. GILLIS: Objection.  
 20 Q. Is that right?  
 21 A. Yes.  
 22 Q. Now, before you saw Mr. DiNatale, you also  
 23 signed a statement for the police; isn't that  
 24 right?

Page 42

1 A. Yes.  
 2 Q. Take a look at this and see if that is the  
 3 statement that you signed for the police.  
 4 A. It looks like it.  
 5 Q. And how many drinks with Jack Daniels did you  
 6 tell the police Jeff had with dinner?  
 7 A. It says here maybe three drinks with Jack  
 8 Daniels.  
 9 Q. Was that true?  
 10 A. Yes.  
 11 Q. Okay, and you also said, "We had dinner. Jeff  
 12 had a couple of beers (maybe two)," in your  
 13 statement to the police; isn't that right?  
 14 A. Yes.  
 15 Q. Was that true?  
 16 A. Yes.  
 17 MR. FARRAH: Can we have this marked as  
 18 the next exhibit?  
 19  
 20 (Exhibit Number 3 was marked for  
 21 identification.)  
 22  
 23 (Off the record.)  
 24 Q. I want to talk about Mr. DiNatale again. What

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1 I'd like you to do for me in your own words is  
 2 tell me as best as you can recall everything  
 3 Mr. DiNatale said to you and everything you  
 4 said to Mr. DiNatale during your  
 5 twenty-minutes-or-so meeting with him.  
 6 A. Well, when he first came, he introduced himself  
 7 and I introduced myself to him, and he asked me  
 8 if I was in school, and I told him that I was  
 9 currently going to Fitchburg State.  
 10 I think it was during my winter break. So  
 11 I was not in class, and he made a little chat  
 12 and asked me what sports or what I liked to do.  
 13 I said I liked to snowboard and ski, and  
 14 he mentioned that his -- I'm not sure who it  
 15 was -- some relative of his is going to be in  
 16 the Olympics, to watch out for him.  
 17 Then he told me that he wanted to talk to  
 18 me and just sort of tell me what I'm coming in  
 19 here to do, and he showed me Exhibit 2, and he  
 20 asked me what I remembered Jeff having to drink  
 21 that night, and, you know, if I remembered the  
 22 bar tab being brought over to the table, and I  
 23 told him I did, and he went through Exhibit 2  
 24 and he counted the beers and he counted the

Page 44

1 Jack Daniels drinks, and he asked me if I  
 2 remembered them being ordered, and I said I  
 3 remembered them being ordered in rounds.  
 4 So then he just told me when I came in  
 5 here to don't make something up if you don't  
 6 know it.  
 7 He just wanted me to know that I'm coming  
 8 in here to tell what I know and if I don't  
 9 know, then I'm not going to tell it.  
 10 Q. Did he suggest to you that you had made  
 11 something up before?  
 12 MR. GILLIS: Objection.  
 13 A. No.  
 14 Q. Because you had not made something up before,  
 15 had you?  
 16 A. I had not made something up. I mean, I just  
 17 believed that it could have been possible.  
 18 Q. By the way, did he say what sport his relative  
 19 was going to participate in, in the Olympics?  
 20 A. I believe it's snowboarding.  
 21 Q. Did he say the name of the relative?  
 22 A. He did. I don't remember it.  
 23 Q. Okay. After that discussion, you testified a  
 24 little while ago that he told you what you were

Page 45

1 coming in here to do; do you recall that?

2 A. Yes.

3 Q. What did he tell you you were coming in here to

4 do?

5 A. He was telling me that I was being deposed to

6 come in here to tell what I knew about the

7 night regarding Jeff Southworth and the

8 Longhorn Steakhouse.

9 Q. Did he tell you what he was coming to see you

10 to do?

11 A. He told me that he was coming to see me to, you

12 know, kind of tell me where I stand in all of

13 this.

14 Q. And did he tell you why he was coming to tell

15 you to do that?

16 A. Because he was hired.

17 MR. GILLIS: If you know. Don't guess.

18 MR. FARRAH: This is not your witness.

19 MR. GILLIS: If he's guessing, I don't

20 want a guess. You can tell from his mannerisms

21 that he is.

22 MR. FARRAH: Whatever you think you can

23 tell, you can tell, but let the witness

24 testify. I don't think this is your witness

Page 46

1 yet.

2 MR. GILLIS: Do you have a problem with me

3 telling him to tell the truth and not to guess

4 if he doesn't know?

5 MR. FARRAH: I have a problem with you

6 interrupting him. When it's your turn, you can

7 ask him whatever you want.

8 MR. GILLIS: Why do you have a problem

9 with him telling the truth?

10 MR. FARRAH: I have no problem with him

11 telling the truth.

12 MR. GILLIS: Why do you have a problem

13 with him not guessing?

14 MR. FARRAH: I have a problem with you

15 saying don't guess.

16 MR. GILLIS: What's wrong with that?

17 MR. FARRAH: Because he's in the middle of

18 answering. That's the problem I have.

19 MR. GILLIS: If you think he's guessing,

20 you should ask him that.

21 MR. FARRAH: You're the one who thinks

22 he's guessing. This is not your witness. As

23 far as I know, you don't represent him.

24 MR. GILLIS: I don't represent him.

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1 Q. Now, back to the question. Did Mr. DiNatale

2 tell you why he was coming to see you?

3 A. He told me that he was working as a private

4 investigator for the case, and he was hired

5 to -- Well, I don't know exactly what he was

6 hired to do, but he was, you know, going to

7 come and talk to me and just, you know, kind of

8 show me, like, for example, Exhibit 2 and

9 discuss it, and, you know, just once again kind

10 of tell me the most important thing is to come

11 in here and tell what I know and to not say

12 something that I don't know for sure.

13 Q. "Don't guess"? Is that what he said to you?

14 A. I don't know the words that he said, but yes.

15 Q. But you were not guessing before, were you?

16 A. I don't think so.

17 Q. Okay. When you testified before the grand

18 jury, were you guessing?

19 A. No.

20 Q. When you gave the statement marked as Exhibit 3

21 in your deposition today to the police, were

22 you guessing?

23 A. No.

24 Q. When you testified on August of 2004, were you

Page 48

1 guessing?

2 A. No.

3 Q. Okay. One of the other things that

4 Mr. DiNatale told you was where you stood in

5 all of this. At least that is what you

6 testified to a moment ago. What did he say

7 about that?

8 A. He just told me that I was the witness that was

9 with Jeff that night and I had not had anything

10 to drink, and that, you know, whatever I would

11 remember would probably be the most accurate

12 with respect to the people and members of the

13 group who had had drinks.

14 Q. Did he tell you anything else about where you

15 stood other than that?

16 A. I don't remember.

17 Q. Okay. Did he say you were the only one who was

18 sober at the table or words that effect?

19 MR. GILLIS: Objection.

20 A. He said I was the only one who was not

21 drinking.

22 Q. You knew that.

23 A. Yes.

24 Q. You didn't need Mr. DiNatale to tell you that,

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Page 51

1 did you?

2 A. No.

3 Q. Did Mr. DiNatale tell you anything else about

4 where you stood in all of this?

5 A. I don't remember him saying anything else.

6 Q. When he showed you Exhibit 2, what did he say

7 about it? Exhibit 2 is the tab.

8 A. Well, he first asked me what I remembered being

9 ordered and who was drinking and who was at the

10 table, and I told him that I thought that the

11 tab was brought over from the bar, and he asked

12 me what I remembered being ordered at the bar,

13 and he counted up the number of Jack Daniels

14 drinks that were ordered and the number of

15 beers in Exhibit 2.

16 Q. And did he say anything about Exhibit 2, other

17 than counting up the number of Jack Daniels?

18 Did he say anything about it to you?

19 A. He told me that what was ordered here, what was

20 drinking here, and well, I don't remember him

21 specifically saying if the tab from the bar was

22 brought over, then that was all that was

23 ordered throughout the night, but that was what

24 I had taken from this.

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1 Q. Did you say to him that you believed that what

2 was ordered at the bar was reflected in

3 Exhibit 2?

4 A. I think so.

5 Q. Well, let's see if we can do better than that.

6 Do you have a memory?

7 A. I don't.

8 Q. When you were meeting with him, it was your

9 belief that what was ordered at the bar was

10 reflected in Exhibit 2?

11 A. Yes.

12 Q. Did you share that belief with him?

13 A. I'm pretty sure I did.

14 Q. When you shared that belief with him, what did

15 he say about that?

16 A. Well, he asked me who were the ones I

17 remembered having the beers, and I told him

18 that I remembered Jeff having one and Scott

19 having one, and then he told me that, "Well, if

20 those are the two beers, then Jeff had a beer."

21 Q. Referring to Exhibit 2?

22 A. Correct.

23 Q. And did he tell you whether Jeff's beer at the

24 bar was the one that is reflected at 8:40 or

1 the one that is reflected at 9:15?

2 A. No.

3 Q. He didn't tell you which one was the one that

4 Jeff ordered at the bar?

5 A. He didn't.

6 Q. But you understood that what Jeff ordered at

7 the bar was either the one that is reflected at

8 8:40 or the one that is reflected at 9:15; is

9 that right?

10 A. Yes.

11 Q. Did you tell him that, that you understood,

12 looking at Exhibit 2, that what Jeff had

13 ordered at the bar was reflected as either the

14 8:40 beer or the 9:15 beer?

15 A. I never told him that. What I told him was

16 that I thought that the tab from the bar was

17 brought over and represented in this exhibit.

18 Q. Did he disagree with that?

19 A. No.

20 Q. Did he agree with that?

21 A. I think so. I honestly don't remember him

22 saying "I agree."

23 MR. GILLIS: Objection.

24 Q. But you don't remember him saying, "I disagree

1 with that," do you?

2 A. No.

3 Q. What were you drinking that night?

4 A. To be honest with you, I don't remember. I

5 remember being asked the question before, and I

6 don't remember what I said.

7 Q. Coke? Were you drinking Coke?

8 A. I know I was having soda.

9 Q. And typically, what kind of soda do you order?

10 A. Mostly either Coke or maybe a Sprite.

11 Q. Did Mr. DiNatale and you talk at all about what

12 you were drinking that night?

13 A. No.

14 Q. Did Mr. DiNatale and you discuss at all whether

15 what you were drinking that night is reflected

16 on Exhibit 2 to your deposition?

17 A. I don't remember talking about that.

18 Q. Have you looked at Exhibit 2 to your deposition

19 to see whether or not what you were drinking

20 that night is reflected on it?

21 A. No.

22 Q. What were you eating that night?

23 A. I think I had some ribs. I'm not 100 percent

24 sure.

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1 Q. Now, at the bar did Jeff order any Jack Daniels  
 2 Manhattans?  
 3 A. No.  
 4 Q. Are you sure?  
 5 A. Yes, at the time.  
 6 Q. At the time that Jeff was delivered his last  
 7 drink, was he exhibiting any signs of  
 8 intoxication to you?  
 9 A. No.  
 10 Q. Was he loud?  
 11 A. He didn't stand out to be. I mean, I don't  
 12 know exactly what you mean by "loud."  
 13 Q. Was the table loud?  
 14 A. Yes. Do you mean with respect to everything  
 15 else?  
 16 Q. Was the table loud?  
 17 A. Not extremely.  
 18 Q. Okay. Did Mr. DiNatale talk to you at all  
 19 about whether or not Jeff was exhibiting any  
 20 signs of intoxication that evening?  
 21 A. I believe he did.  
 22 Q. Can you tell us what you remember about that?  
 23 A. I'm pretty sure he asked me if I remembered him  
 24 acting like he was drunk.

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1 Q. "Drunk"? Is that what he said?  
 2 A. I don't know what he said.  
 3 Q. What do you remember he said?  
 4 MR. GILLIS: Objection.  
 5 A. I remember him asking, I guess, if he was  
 6 exhibiting signs of alcohol.  
 7 MR. GILLIS: Objection, and I'm going to  
 8 say it again, we cannot have answers here that  
 9 are guesses. He said "I guess it was."  
 10 We have to have your memory, not a guess.  
 11 A. I honestly don't know what questions he asked  
 12 me.  
 13 Q. What did you say?  
 14 A. I told him that I didn't see any signs of being  
 15 drunk or intoxicated.  
 16 Q. While you were at the Longhorn, did Jeff appear  
 17 to you to be under the influence of what he had  
 18 been drinking at the Longhorn?  
 19 MR. GILLIS: Objection.  
 20 A. No.  
 21 Q. Can you turn to page 49 of your earlier  
 22 deposition? Will you go down to Line 12, and  
 23 do you recall being asked in August of 2004 the  
 24 question, "Okay, while you were at the

1 Longhorn, did Jeff appear to you to be under  
 2 the influence of what he had been drinking at  
 3 the Longhorn," and your answer was, "I mean,  
 4 yeah, a little bit." Do you see that?  
 5 A. I do.  
 6 Q. Did he appear to be under the influence of what  
 7 he was drinking at the Longhorn?  
 8 MR. GILLIS: Objection.  
 9 A. I don't remember him -- I don't know how to say  
 10 this, you know, exhibiting clear signs of  
 11 intoxication.  
 12 I mean, I guess obviously anyone who is  
 13 drinking anything will be under the influence  
 14 of what they're drinking, but I don't remember  
 15 him clearly showing signs of intoxication.  
 16 Q. Okay. So is it your testimony today that he  
 17 appeared to be under the influence of what he  
 18 was drinking at the Longhorn because anybody  
 19 who is drinking is under the influence of what  
 20 he is drinking?  
 21 A. Yes.  
 22 Q. And he did appear to you to be under the  
 23 influence of what he was drinking; is that  
 24 right?

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1 MR. GILLIS: Objection.  
 2 A. Yes.  
 3 Q. Did Jeff appear to hold himself that night at  
 4 the Longhorn in the same way he usually did?  
 5 A. Without reading this, I honestly don't  
 6 remember.  
 7 Q. Let me withdraw that question. I guess you've  
 8 answered it.  
 9 At some point in time, did somebody come  
 10 over from the restaurant and ask the table to  
 11 quiet down?  
 12 A. Yes.  
 13 Q. And that was how long before you left?  
 14 A. I honestly don't remember.  
 15 Q. Could you look at pages 43 and 44, please?  
 16 Actually, you have to start at 42.  
 17 A. All right.  
 18 Q. I started to ask you a question at the bottom  
 19 of 42.  
 20 "Did anybody while you were at the table  
 21 that night say," and then you interrupted. You  
 22 said "I," and then I said, "I'm sorry?"  
 23 Then you said, "I kind of remember now. I  
 24 don't know who it was, whether it was, you



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1 know, a manager or someone. It might have even  
 2 been our waitress. I remember someone coming  
 3 over and asking our table to be quiet, a little  
 4 bit quieter."  
 5 Do you remember that happening?  
 6 A. Yes.  
 7 Q. Do you remember that testimony?  
 8 A. Yes.  
 9 Q. And then I'm going to ask you now on the  
 10 record, was that because the table was loud?  
 11 A. Yes.  
 12 Q. And who was making a lot of noise that night at  
 13 the table?  
 14 MR. GILLIS: Are you asking the question?  
 15 Q. I'm asking the question. Who was making a lot  
 16 of noise that night at the table?  
 17 A. We all were.  
 18 Q. Jeff included?  
 19 A. Yes.  
 20 Q. And then I asked you on page 44, Line 14, "Give  
 21 me your best estimate of how much time elapsed  
 22 from when the woman came over and told you to  
 23 tone it down and when you left the restaurant,"  
 24 and your answer was, "Maybe twenty-five minutes

1 A. Yes, I do.  
 2 Q. What was your answer?  
 3 A. "Yeah, I mean, yes."  
 4 Q. Do you have any explanation as to why you  
 5 testified differently today than how you  
 6 testified in your deposition in August?  
 7 A. Well, everyone was loud at the table. So  
 8 that's why I said that.  
 9 Q. That's your explanation as to why you testified  
 10 differently today than how you testified in  
 11 August?  
 12 A. Well, I guess if -- I won't guess. If he was  
 13 being loud at the table, then it would be  
 14 louder with respect to everyone else in the  
 15 restaurant, you know, and I mean, he's not a  
 16 loud kid, but he was not a quiet kid.  
 17 So yes, he was being a little bit louder  
 18 than he usually is, you know, as a one on one  
 19 or, you know, just to talk with him.  
 20 Q. So which is it today, Mr. Connelly? Was he  
 21 louder that night than he usually is or wasn't  
 22 he?  
 23 A. He was.  
 24 Q. Do you have any explanation for why a moment

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1 to half an hour."  
 2 Does that refresh your memory as to how  
 3 long after you were told to quiet down it was  
 4 that the group left the restaurant?  
 5 A. Yes.  
 6 Q. Now, by the way, am I correct that the person  
 7 that served your group at the table was not the  
 8 person that served you at the bar?  
 9 A. Yes.  
 10 Q. Both blonde?  
 11 A. Yes.  
 12 Q. Can you turn back to page 49 for me?  
 13 A. All right.  
 14 Q. Now, my question to you is, was Jeff sloppier  
 15 looking that night than he usually is? I'm  
 16 asking you the question now on the record.  
 17 A. Yes.  
 18 Q. Was he louder that night than he usually  
 19 appeared to you?  
 20 A. No.  
 21 Q. Do you recall being asked on page 50, the  
 22 question was, "Was he louder than he usually  
 23 appeared to you?"  
 24 Do you see that?

1 ago you said he wasn't?  
 2 A. Well --  
 3 MR. GILLIS: Objection.  
 4 A. You know, when you talk to him, he would be  
 5 pronounced. So he was somewhat of a -- As I  
 6 said, he was not quiet.  
 7 So that would be why I said it, but  
 8 everyone was loud with respect to everyone else  
 9 in the restaurant. So he was a little bit  
 10 louder.  
 11 Q. Was that because, in your opinion, of what he  
 12 had to drink?  
 13 MR. GILLIS: Objection.  
 14 A. No.  
 15 Q. Was Mr. Southworth exhibiting signs of  
 16 intoxication at the time that the waitress came  
 17 over to the table and asked you to quiet down?  
 18 A. No.  
 19 Q. Do you remember making an affidavit?  
 20 A. I do.  
 21 Q. Do you remember talking to Mr. DiNatale about  
 22 your affidavit?  
 23 A. What is the affidavit?  
 24 Q. Do you remember talking with Mr. DiNatale about

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1 your affidavit?

2 A. Which is the affidavit? I remember doing an

3 affidavit, but I don't remember it. I know we

4 had a couple of things with him.

5 Q. Is that your signature?

6 A. It is. I've done this a few times, and I just

7 don't know which one is which.

8 Q. Take a look at this document.

9 (Witness reviews document.)

10 (Short recess.)

11 MR. FARRAH: Could we have his affidavit

12 marked as the next exhibit, please?

13

14 (Exhibit Number 4 was marked for

15 identification.)

16

17 Q. Mr. Connelly, I'm going to show you what has

18 been marked as Exhibit 4 in this deposition.

19 Do you see it?

20 A. Yes.

21 Q. It's your affidavit; is that right?

22 A. Correct.

23 Q. That's your signature?

24 A. It is.

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1 Q. On page 2?

2 A. Yes.

3 Q. Would you turn to Paragraph 5? Paragraph 5

4 reads, "In my deposition of pages 49 to 51, I

5 testified that during the course of the evening

6 at the Longhorn Steakhouse, Mr. Southworth

7 seemed to be under the influence of the

8 alcoholic beverages he was being served at the

9 restaurant."

10 Do you see that?

11 A. Yes.

12 Q. Did I read that correctly?

13 A. You did.

14 Q. And you understood you made this affidavit

15 under the pains and penalties of perjury in May

16 of 2005?

17 A. Yes.

18 Q. My question is, during the course of the

19 evening at the Longhorn Steakhouse, did

20 Mr. Southworth seem to be under the influence

21 of the alcoholic beverages he was being served?

22 MR. GILLIS: Objection.

23 A. Yes.

24 Q. And then Paragraph 6 of your affidavit reads,

1 "I also testified on pages 42 to 44 of my

2 deposition that approximately one half hour

3 before we left the Longhorn Steakhouse,

4 everyone at the table was loud, including

5 Mr. Southworth, and either a waitress or a

6 manager at the restaurant came and asked us to

7 be quiet."

8 Do you see that?

9 A. I do.

10 Q. Did I read that correctly?

11 A. Yes.

12 Q. Was that true that approximately one half hour

13 before you left, everyone at the table was

14 loud, including Mr. Southworth, and either a

15 waitress or a manager came to you and asked you

16 to be quiet?

17 A. Yes.

18 Q. Paragraph 7 reads, "At that time when the table

19 was asked to quiet down, Mr. Southworth was

20 exhibiting all the signs of intoxication I

21 testified about on pages 49 through 51 of my

22 deposition."

23 Do you see that?

24 A. Yes.

1 Q. Did I read that right?

2 A. You did.

3 Q. And is that true that at the time when the

4 table was asked to quiet down, Mr. Southworth

5 was exhibiting all the signs of intoxication

6 that you testified to on pages 49 through 51 of

7 your deposition?

8 MR. GILLIS: Objection.

9 A. Yes.

10 Q. Let's look at pages 49 to 51 of your

11 deposition.

12 My question I asked some time ago was,

13 "Was Jeff holding himself at the time the table

14 was asked to quiet down the same way he usually

15 held himself?"

16 A. I honestly don't remember. So I'm going to use

17 this because this is what is going to be

18 correct.

19 Q. Do you recall testifying in August of 2004 in

20 response to the question, "What did he show?

21 What did he manifest that makes you say that,"

22 and that was that he appeared to be a little

23 bit under the influence of what he was

24 drinking?

1 Do you remember answering in part, "That  
2 night he was, you know, sort of just seemed to  
3 me that he was a little bit under the influence  
4 just because by the way he didn't really hold  
5 himself. At least it looked like he didn't  
6 hold himself the same way as he usually did."

7 Do you recall that testimony?

8 A. Yes.

9 Q. Is that accurate that that night he didn't hold  
10 himself the same way he usually did?

11 MR. GILLIS: Objection.

12 A. Yes. Let me just say what I just answered is  
13 yes, but also, I mean, I think that this had  
14 something to do with it, but what I said is  
15 what I said and it is yes, but, you know, we  
16 were dirt biking, and it's not, you know, when  
17 I usually see him, we're dirt biking, and I  
18 have never really spent that much time with him  
19 not dirt biking.

20 So, you know, what I remember him holding  
21 himself is from dirt biking.

22 Q. You've seen him in fights; isn't that right?

23 MR. GILLIS: Objection.

24 A. I have.

1 Q. You've seen him at parties; isn't that right?

2 A. I remember seeing him at a party.

3 Q. You've seen him in at least one fist fight;  
4 isn't that right?

5 A. I do. At that point, I was not really familiar  
6 with him, but yes, that's correct.

7 Q. You testified about seeing him in a fist fight.  
8 You remember that, don't you?

9 A. If I did, I did. I don't remember, but I guess  
10 I did.

11 Q. Did you talk to the private investigator,  
12 DiNatale, about your testimony at the  
13 deposition?

14 A. This?

15 Q. Did you talk to Mr. DiNatale when he came to  
16 your house about the testimony that you've  
17 given at your earlier deposition?

18 A. I think he asked -- I don't think we -- No, we  
19 didn't discuss, you know, what was asked and  
20 what was answered in the deposition.

21 Q. Did Mr. DiNatale, for example, say to you  
22 something like, "You testified at your  
23 deposition that Jeff had four beers maybe at  
24 the table"?

1 MR. GILLIS: Objection.

2 A. No.

3 Q. Let's go back to what I was asking you before.

4 That night at the Longhorn, was Jeff sloppier  
5 looking than he usually is?

6 A. Yes.

7 Q. Was he louder than he usually appeared to you?

8 A. Yes.

9 Q. Were his eyes glassy?

10 A. Can I use this answer because I honestly don't  
11 remember?

12 MR. GILLIS: That's your answer. He can't  
13 use that as his answer. It has to be his  
14 memory.

15 Q. Do you have a memory?

16 A. I don't.

17 Q. Do you have a memory of whether or not Jeff's  
18 eyes were glassy at all that night?

19 A. I don't.

20 Q. Can you read to yourself page 50, Line 23  
21 through page 51, Line 4?

22 (Witness reviews document.)

23 Q. Have you done that?

24 A. Yes.

1 Q. Does that refresh your memory about whether or  
2 not Jeff's eyes were glassy that night at the  
3 restaurant at the time you were asked to quiet  
4 down?

5 A. A little bit.

6 Q. What is your memory now of whether or not  
7 Jeff's eyes were glassy at the time your table  
8 was asked to quiet down?

9 MR. GILLIS: Objection.

10 A. They could have been.

11 Q. They very well could have been?

12 MR. GILLIS: Objection.

13 A. They could have been, but I don't specifically  
14 remember. I don't remember looking at him and,  
15 you know, looking into his eyes and wondering  
16 if they were glassy. As I say, they could have  
17 been.

18 Q. They very well could have been?

19 MR. GILLIS: Objection, asked and  
20 answered.

21 A. Yes.

22 Q. Do you have any explanation as to why you  
23 testified in August of 2004 that his eyes very  
24 well could have been glassy?

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1 MR. GILLIS: Objection. Are you talking  
2 about the top of 51? What line are you looking  
3 at?  
4 MR. FARRAH: You figure it out.  
5 MR. GILLIS: What line are you referring  
6 to?  
7 MR. FARRAH: I'm asking him a question.  
8 MR. GILLIS: No, you're not. You're  
9 asking him to read something in the book. Are  
10 you asking him to read it?  
11 MR. FARRAH: I'm asking him if he has an  
12 explanation for why he testified that his eyes  
13 very well could have been glassy.  
14 MR. GILLIS: If you put the book in front  
15 of him, I want a page reference so we can put  
16 it on the record.  
17 MR. FARRAH: He's already testified.  
18 A. It's possible that his eyes could have been  
19 glassy. That's why.  
20 Q. Do you have a memory of it?  
21 A. Of seeing his eyes glassy?  
22 Q. Yes.  
23 A. No.  
24 Q. Do you have any explanation for why you

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1 testified, "They very well could have been  
2 glassy"?  
3 MR. GILLIS: Objection.  
4 A. Other than it's possible, I don't.  
5 Q. What is your best memory as you sit here today  
6 as to how many Jack Daniels Manhattans that  
7 Jeff had at the table?  
8 MR. GILLIS: Objection.  
9 A. Two.  
10 Q. And the basis for that is what?  
11 A. I specifically remember a round being ordered,  
12 and then I see that some more were ordered, and  
13 I don't know whether they were ordered in a  
14 round or, you know, a few here and a few there,  
15 but it looks like apparently he had another  
16 one.  
17 Q. That testimony is based on the fact that you  
18 have now seen Exhibit 2 to your deposition; is  
19 that right?  
20 MR. GILLIS: Objection.  
21 A. Yes.  
22 Q. Before you saw Exhibit 2 to your deposition,  
23 you had testified about how many Jack Daniels  
24 Manhattans he had had in August of 2004; isn't

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1 that right?  
2 A. Yes.  
3 Q. At that time, you said two; is that right?  
4 A. Yes.  
5 Q. And when you gave the statement to the police  
6 on November 2, 2003 which has been marked as  
7 Exhibit 3 in your deposition, you had not seen  
8 what has been now marked as Exhibit 2, the tab?  
9 A. No.  
10 Q. And at that time, you wrote that he had had  
11 maybe three drinks with Jack Daniels with  
12 dinner; is that right?  
13 A. Yes.  
14 Q. What was the basis for making that statement  
15 back in November of 2003?  
16 A. Well, the first one would be the round that I  
17 specifically remember being ordered.  
18 The second one would be when more were  
19 ordered and the possibility that he drank  
20 another one.  
21 Q. Your memory of the events of September 26 was  
22 better in November of 2003 than it is today?  
23 A. Yes.  
24 Q. A lot better?

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1 A. I'd say so.  
2 MR. GILLIS: Objection.  
3 Q. Do you remember anybody else drinking beers at  
4 the table, besides Jeff?  
5 A. I remember Scott having beer.  
6 Q. At the table?  
7 A. Yes.  
8 Q. Ordered from the waitress?  
9 A. I don't remember if it was ordered from the  
10 waitress or ordered from the bartender.  
11 Q. Do you have a memory of Jeff carrying a beer  
12 from the bar over to the table?  
13 A. Yes.  
14 Q. And do you have a memory of Scott carrying a  
15 beer over from the bar to the table?  
16 A. Well, I remember seeing Jeff bringing his beer  
17 over, and I remember them saying something  
18 about having the tab brought over to the table.  
19 I don't remember seeing Scott carry the  
20 beer over to the table as I did Jeff.  
21 Q. Then do you remember Jeff ordering beers while  
22 he was at the table?  
23 A. I don't.  
24 Q. Do you remember Jeff ordering chowder while he



1 was at the table?  
 2 A. I don't.  
 3 Q. How about fingers, whatever they are? Do you  
 4 remember ordering those at the table?  
 5 A. I don't remember any of the specific things or  
 6 who or when they were ordered specifically,  
 7 besides the round of Manhattans.  
 8 Q. You remember one round of Manhattans being  
 9 ordered?  
 10 A. Yes.  
 11 Q. You've looked at the check, and do you see that  
 12 more than one round of Manhattans is reflected  
 13 on that check; is that right?  
 14 A. Yes.  
 15 Q. Did you discuss that at all with Mr. DiNatale?  
 16 A. Yes.  
 17 Q. What did he say and what did you say about  
 18 that?  
 19 A. Well, he asked me what I remember being ordered  
 20 in reference to the Manhattans, and I told him  
 21 I remembered the first round of drinks being  
 22 ordered and that I remembered more being  
 23 ordered, but I don't know whether they were in  
 24 a round or individuals ordered them or, you

1 know, this side of the table said we'll take  
 2 another round or how it exactly came about.  
 3 Q. What did he say?  
 4 A. Well, he pointed out that the first one looked  
 5 like it was a round ordered, and he said that  
 6 there were more ordered and that it looked  
 7 like, you know, if going with the round that  
 8 was first ordered that each person would have  
 9 had another one.  
 10 Q. So did he say anything else about the Jack  
 11 Daniels that were ordered?  
 12 A. I remember him asking me how many people I  
 13 specifically remembered being there with  
 14 reference to how many drinks were ordered.  
 15 Q. What did you tell him?  
 16 A. I told him that I remembered besides myself, I  
 17 remembered Scott Espy, Jeff Southworth, Michael  
 18 Espy, Todd Perry, and then two other people  
 19 whom I didn't know.  
 20 I believe I referred to them as one was a  
 21 snowmobiler and one I remember them calling him  
 22 Fat Matt.  
 23 Q. Who called him Fat Matt?  
 24 A. Everyone. I didn't call him -- They referred

1 to him as Fat Matt. They didn't call him Fat  
 2 Matt.  
 3 Q. So he asked you how many people were there at  
 4 the table.  
 5 So does that mean including yourself,  
 6 there were seven people at the table?  
 7 A. That I remember.  
 8 Q. You don't remember any other people, do you?  
 9 A. No.  
 10 Q. You had two tables pulled together for your  
 11 party; is that right?  
 12 A. Yes, I believe it was at least two tables.  
 13 Q. And you were sitting across from Jeff; is that  
 14 right?  
 15 A. Yes.  
 16 Q. And you had nothing obstructing your view of  
 17 Jeff; is that right?  
 18 A. Correct.  
 19 Q. What I want to know is, where is the first  
 20 round of Manhattans that is on Exhibit 2?  
 21 Which is the first round of Manhattans that  
 22 you're referring to?  
 23 A. It has to be this one.  
 24 Q. Okay, and you're pointing to the 8:51 round; is

1 that right?  
 2 A. Yes. I see there are some ordered before that.  
 3 I mean, I must be wrong in saying the first  
 4 time it was ordered it was not a full round.  
 5 That's what I remembered.  
 6 Q. I want to know what you remember talking to  
 7 Mr. DiNatale about as it relates to the  
 8 Manhattans, the rounds of Manhattans that were  
 9 ordered.  
 10 A. I remember telling him that a round was  
 11 ordered, and then there were more ordered, and  
 12 they went around to the different people that  
 13 were at the table, and he, once again, asked me  
 14 who I remembered at the table, and then he, you  
 15 know, kind of did like some calculation and  
 16 added up all the Jack Daniels that were  
 17 ordered, which I cannot remember how many there  
 18 were, and he asked me what -- No, I don't  
 19 remember what he asked me.  
 20 He just made reference to, you know, there  
 21 were seven people that I remembered being  
 22 there, and then there were this many Jack  
 23 Daniels ordered.  
 24 Q. After he had calculated the number of people at

1 A. Okay.  
2 Q. -- at table that night. Does that sound like  
3 what you and Mr. DiNatale talked about?  
4 A. Yes.  
5 Q. Did he talk at all about the relationship  
6 between seventeen Jack Daniels Manhattans and  
7 six people of drinking age at the table?  
8 A. Well, I believe that he told me that if what I  
9 remember was being ordered as rounds, then  
10 there were unaccounted-for drinks.  
11 Q. Unaccounted-for drinks?  
12 A. Yes.  
13 Q. What did he mean by that?  
14 MR. GILLIS: Objection.  
15 A. Drinks that I said I remembered a round being  
16 ordered and then more rounds and I guess  
17 another round was ordered, and I didn't  
18 specifically say another round being ordered,  
19 but there were more drinks ordered to the  
table that out to you?  
Did he say about that?  
I remember. I mean, I don't remember

1 MR. GILLIS: Objection.  
2 A. No.  
3 Q. How are the Jack Daniels Manhattans served --  
4 on the rocks or straight up?  
5 A. I don't know.  
6 Q. Do you know the difference?  
7 A. Yes; one has ice and one doesn't.  
8 Q. So it's your best memory that Jeff ordered the  
9 first round of Jack Daniels Manhattans?  
10 A. Yes.  
11 Q. At the time he ordered those Jack Daniels  
12 Manhattans, did he also order a beer?  
13 MR. GILLIS: Objection.  
14 A. I can't say for sure.  
15 Q. Can you describe the waitress?  
16 A. I remember her being a woman, and I remember  
17 her having blonde hair.  
18 Q. Tall? Short?  
19 A. I don't know.  
20 Q. Older or younger than the barmaid?  
21 A. Well, I don't really remember the bartender  
22 that well. So I don't really know how to base  
23 an answer on that.  
24 I remember her being like maybe in her

1 mid-twenties.  
 2 Q. Who are we talking about?  
 3 A. The waitress.  
 4 Q. Do you remember the age of the barmaid?  
 5 A. No.  
 6 Q. Do you have any memory of the age of the  
 7 barmaid?  
 8 MR. GILLIS: Objection.  
 9 A. No.  
 10 Q. Is your memory exhausted as to the age of the  
 11 barmaid?  
 12 A. Yes.  
 13 Q. Can you turn to page 35, please, the bottom.  
 14 Just read 18 to 24 to yourself.  
 15 (Witness reviews document.)  
 16 A. Okay.  
 17 Q. Does reading that refresh your memory as to how  
 18 old the barmaid was?  
 19 A. Not specifically.  
 20 Q. Do you have any reason to doubt that your  
 21 testimony back in August about her age was  
 22 accurate?  
 23 MR. GILLIS: Objection.  
 24 Q. August of 2004.

1 Q. What was the basis for your memory that a  
 2 second round of Jack Daniels was ordered?  
 3 A. Well, I remember more Jack Daniels at the  
 4 table, and this exhibit shows that there were  
 5 more.  
 6 Q. Exhibit 2?  
 7 A. Yes.  
 8 Q. Do you have a memory that a third round of Jack  
 9 Daniels Manhattans was ordered?  
 10 A. No.  
 11 Q. Do you have a memory that there was a third  
 12 instance where Jack Daniels Manhattans were  
 13 ordered?  
 14 MR. GILLIS: Objection.  
 15 A. I do not remember. It is apparent that there  
 16 was. I just don't specifically remember.  
 17 Q. Do you remember talking to Mr. DiNatale about  
 18 that?  
 19 A. A third?  
 20 Q. Yes, a third round of Jack Daniels Manhattans  
 21 being ordered.  
 22 A. I don't remember him saying anything about a  
 23 third round. I remember him talking about --  
 24 as I referred to before -- the unaccounted-for

1 MR. GILLIS: Objection.  
 2 A. I'm sure whatever I said here is what I  
 3 remembered. I don't remember it now.  
 4 Q. When you say "here," you mean in your  
 5 deposition of August of 2004?  
 6 A. Correct.  
 7 Q. And do you remember anyone at the table after  
 8 Jeff ordered the first round of Jack Daniels  
 9 Manhattans, do you remember anyone at the table  
 10 saying anything about the delay in receiving  
 11 the drinks?  
 12 A. No.  
 13 Q. And how long after you had sat at the table was  
 14 it that the first round was ordered by Jeff?  
 15 A. I don't know.  
 16 Q. And do you have a memory as you sit here today  
 17 that a second round of Jack Daniels Manhattans  
 18 was ordered?  
 19 A. Yes.  
 20 Q. By Jeff?  
 21 A. I can't say that for sure.  
 22 Q. Who do you remember ordered the second round?  
 23 MR. GILLIS: Objection.  
 24 A. I don't recall who specifically ordered it.

1 drinks.  
 2 Q. When the check came to the table, did it come  
 3 to Jeff?  
 4 A. I don't know. It was put on the table.  
 5 Q. Jeff paid for you that night; is that right?  
 6 A. Correct.  
 7 Q. When the person came over and told the table to  
 8 quiet down, what is your best memory of who  
 9 that person was, what that person looked like?  
 10 MR. GILLIS: Objection.  
 11 A. I don't really remember. I just remember  
 12 someone came over and asked the table to, you  
 13 know, be a little bit quieter.  
 14 Q. A man? A woman?  
 15 A. I don't remember specifically. I'm not  
 16 supposed to guess.  
 17 Q. Is that because Mr. Gillis tells you not to  
 18 guess?  
 19 A. No. I don't think that I should guess.  
 20 Q. Mr. DiNatale told you not to guess, right?  
 21 A. He did tell me not to guess, but if I don't  
 22 know the truth, not to come up with one.  
 23 Q. What do you remember whoever the person was  
 24 that came over to the table saying about

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1 quieting down?

2 MR. GILLIS: Objection.

3 A. I just remember them asking us to tone it down

4 a little bit.

5 Q. Do you remember to whom at the table that

6 person spoke or with whom at the table that

7 person spoke?

8 A. As far as I remember, it was speaking to the

9 whole table.

10 Q. You could hear that person?

11 A. Yes.

12 Q. How far away were you from the other end the

13 table, the furthest end away from you?

14 A. Well, the way I remember it --

15 Q. Let's look at Exhibit 1, if that helps you.

16 A. Could I use the pen for a minute?

17 Q. If you're going to write on something, why

18 don't you --

19 A. I can explain it, but it would be a lot easier.

20 Q. Here's a blank one for you.

21 A. This section right here is where we sat. There

22 weren't four tables there.

23 What I remember is, if you just imagine,

24 this is the table that everyone sat at, whether

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1 it be one, two or three or how many tables.

2 I remember Scott sitting on the end and

3 Jeff sitting here and I was sitting here. I

4 don't specifically remember what the order of

5 the other people was.

6 So I believe that there would be two more

7 people, and then at the end of the table

8 someone else would be right there on the other

9 end. So I would be two seats away.

10 Q. Do you remember anyone seated to your right?

11 A. Besides Scott, no.

12 Q. Well, am I wrong that this is you right here?

13 A. No. That's Jeff. I'm facing this way.

14 Q. Do you remember anyone seated to your left?

15 A. Yes.

16 Q. Who?

17 A. I don't know who.

18 Q. You were not drinking any alcoholic beverages

19 that night, were you?

20 A. No.

21 Q. Do you have any explanation for who drank the

22 seven Jack Daniels Manhattans that were

23 ordered, according to Exhibit 2, at 8:51 p.m.?

24 A. Well, that was the round. I honestly don't

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1 know exactly how it happened, but I remember,

2 you know, whoever ordered the first round,

3 which I believe was Jeff, ordered a round, and

4 the waitress came over and put them down, and

5 you know, then they were drinking.

6 I guess if she ordered seven, then she

7 counted the number of people that were at the

8 table and brought over seven. That would be my

9 accounting for those.

10 Q. You remember Jeff saying words to the effect

11 "Bring us a round of Jack Daniels Manhattans"?

12 A. Yes.

13 Q. And do you remember Jeff at that time ordering

14 for you something to drink?

15 A. I think I already had a drink at that point.

16 Q. From the bar?

17 A. Yes, I guess. Well, I can't say that, sorry.

18 Q. So my question is, do you remember Jeff

19 ordering a drink for you?

20 MR. GILLIS: Objection.

21 Q. By "a drink," I don't mean an alcoholic

22 beverage. I mean something to drink.

23 A. No. I'm pretty sure she asked me what I wanted

24 and I ordered it.

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1 Q. The waitress?

2 A. Yes.

3 Q. Now, when the first round came, was there some

4 discussion about that there was an extra drink

5 there?

6 A. I don't remember any discussion. I suppose

7 since there was an extra drink that -- I don't

8 remember anything.

9 Q. Do you know who drank the extra drink?

10 MR. GILLIS: Objection.

11 A. No.

12 Q. Did Mr. DiNatale tell you that Table 52

13 reflected the table that you were at that

14 night?

15 A. Yes.

16 Q. He told you that; is that right?

17 A. Yes. He also said this, which I don't think I

18 mentioned before.

19 He asked me when he was speaking to me

20 about the unaccounted-for drinks. He asked me

21 if I remembered an eighth person, which I told

22 him I didn't remember an eighth person. Those

23 were the people that I remembered.

24 Q. Did he tell you that there was an eighth person



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1 at the table?

2 A. He didn't tell me that there was an eighth  
3 person at the table.

4 Q. Did he suggest that there was an eighth person  
5 at the table?

6 MR. GILLIS: Objection.

7 A. Well, what he did is he did the same thing as  
8 he did with the seven people at the table with  
9 eight people at the table, leaving less  
10 unaccounted-for drinks.

11 Q. Try to tell me what you remember him saying  
12 about doing the same thing with eight people at  
13 the table as he had done with seven people at  
14 the table.

15 A. If there were seventeen drinks and there were  
16 six other people and me, if there were seven  
17 people that would be one round would be six,  
18 second round would be twelve, leaving five  
19 unaccounted-for drinks.

20 Q. That's what he called them?

21 A. I don't know what he called them. That's what  
22 I'm calling them.

23 Q. What did he call them?

24 A. I don't remember.

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1 Q. What did he say about the five what you've  
2 called unaccounted-for drinks?

3 A. I don't know. I just remember him asking me if  
4 there was a possibility that there was another  
5 person, and then him doing the same  
6 calculation.

7 So there would be seven other people than  
8 me, so the first round seven, second round  
9 fourteen, leaving three unaccounted-for drinks,  
10 as what I'm calling them.

11 Q. But he went through that calculation with you?

12 A. I don't know if he went through that  
13 calculation. He said there would be less other  
14 drinks -- less drinks that I'm calling  
15 unaccounted-for.

16 Q. Did you discuss with Mr. DiNatale the 8:40  
17 order?

18 A. I believe so.

19 Q. What did he say about the 8:40 order?

20 A. He may have said something else, but what I  
remember is he was just counting them up,  
ling all the other ones.  
8:40 order reflects a beer as well as  
chattans; isn't that right?

1 A. Yes.

2 Q. Did you discuss that with him?

3 A. Other than him counting it up and asking me how  
4 many beers I thought were drinking throughout  
5 the evening, no.

6 Q. Did Mr. DiNatale discuss with you at all how a  
7 check is generated at the Longhorn Steakhouse?

8 A. Yes. He said that they have to enter it -- the  
9 waitress, that is. Each waitress, dealing with  
10 each table, has to log it into a computer.

11 Q. So he explained that to you; is that right?

12 A. Yes.

13 Q. What else did he tell you about how the check  
14 is generated?

15 A. That's all I remember him telling me. He said  
16 the last one out reflects everything, but I  
17 don't remember anything else.

18 Q. And do you have a memory that Jeff ordered at  
19 the bar chowder?

20 A. No.

21 Q. Fingers?

22 A. No.

23 Q. Any food at the bar at all?

24 A. No.

1 Q. At any time that night while you were at the  
2 restaurant, did anyone get up and leave the  
3 table?

4 A. Yes; specifically, Jeff.

5 Q. When did he get up and leave the table?

6 A. It was some point after we had been served our  
7 dinner.

8 Q. And where did he go?

9 A. He went to the bathroom.

10 Q. And how do you know that?

11 A. Well, our location where our table was was  
12 relatively close to the bathroom, and I saw him  
13 walk over and use the bathroom.

14 Q. And did you see him come back to the table?

15 A. Yes.

16 Q. Did anybody else get up at any point in time  
17 and leave the table that you recall?

18 A. Not specifically. I'm sure if someone had to  
19 go and get up and use the restroom they did,  
20 but I remember Jeff doing that and not anyone  
21 else.

22 Q. What did you have to eat that night?

23 A. I'm pretty sure that I had ribs.

24 Q. Anything else?

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1 A. No.  
 2 Q. Did you all order food at the same time,  
 3 everybody at your able?  
 4 A. I'm pretty sure.  
 5 Q. Did you have any discussions with Mr. DiNatale  
 6 about how many meals were ordered by this  
 7 table?  
 8 A. No.  
 9 Q. Have you looked at Exhibit 2 to see how many  
 10 meals were ordered by this table?  
 11 A. No.  
 12 Q. Did everybody eat? As far as you know, did  
 13 everybody order a meal?  
 14 A. I believe so.  
 15 Q. Now, do you remember Jeff, while you were  
 16 sitting at the table, ordering a beer?  
 17 A. I don't specifically remember him ordering a  
 18 beer at the table.  
 19 Q. But you remember him drinking a beer at the  
 20 table; is that right?  
 21 A. Yes.  
 22 Q. Do you remember him drinking more than one beer  
 23 at the table?  
 24 MR. GILLIS: Objection.

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1 A. I cannot say that for sure.  
 2 Q. You have no memory today; is that right?  
 3 A. Right.  
 4 Q. You had a memory in the past but not today?  
 5 MR. GILLIS: Objection.  
 6 A. Yes.  
 7 Q. Now, did Mr. DiNatale and you discuss, when you  
 8 were reviewing Exhibit 2, that it seems to  
 9 reflect that at 9:21 p.m. four Jack Daniels  
 10 Manhattans were ordered?  
 11 A. Okay.  
 12 Q. Did you discuss that?  
 13 A. I believe so.  
 14 Q. Is that right, did you?  
 15 A. Yes.  
 16 Q. What did he say and what did you say about  
 17 that?  
 18 A. Well, when I mean discuss it, we didn't discuss  
 19 this order in particular. We discussed all of  
 20 them together.  
 21 Q. My question to you is, can we agree, I guess  
 22 initially, that Exhibit 2 shows that at 9:21  
 23 four Jack Daniels were ordered by the table?  
 24 A. Yes.

1 Q. Did you discuss that with him?  
 2 A. Yes.  
 3 Q. Here's four that were ordered?  
 4 MR. GILLIS: Are you asking did he discuss  
 5 that specific round?  
 6 MR. FARRAH: That's right, that specific  
 7 round, 9:21.  
 8 A. He made reference to that login saying four  
 9 rounds were ordered, but we never discussed  
 10 each of these.  
 11 Then this next one there was 9:24, that  
 12 one and then the next or whatever happened  
 13 about that. We didn't discuss each of them.  
 14 We discussed all of them.  
 15 He went through and he said this one at  
 16 this time these were ordered, and at this time  
 17 these were ordered and at this time these were  
 18 ordered.  
 19 Q. He's telling you this; is that right?  
 20 MR. GILLIS: Objection.  
 21 A. Yes.  
 22 Q. What is he saying about it, besides telling you  
 23 this?  
 24 A. He was just using those as evidence for how

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1 many Manhattans were ordered to the table,  
 2 trying to come up with, you know, how many  
 3 drinks were drinking by each person.  
 4 Q. Did he ever say words to the effect, "If you  
 5 divide seventeen by six you get almost three"?  
 6 MR. GILLIS: Objection.  
 7 A. No.  
 8 Q. What did he say about trying to figure out how  
 9 many drinks were drunk by each person?  
 10 A. I think he was trying to account for which  
 11 drinks were drinking by which people and how  
 12 many drinks each person had, but I don't  
 13 remember who had what drink and how many each  
 14 person had.  
 15 Q. Do you remember anyone at the table appearing  
 16 drunk to you that night?  
 17 MR. GILLIS: Objection.  
 18 A. No.  
 19 Q. How about the Espy who was not there with you  
 20 that night? Did he appear under the influence  
 21 to you?  
 22 A. Not particularly.  
 23 Q. Have you ever spoken with him since this  
 24 incident?

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1 A. You mean since that night?

2 Q. Since that night.

3 A. Yes.

4 MR. GILLIS: The Espy?

5 Q. The Espy that was not dirt biking with you.

6 A. Yes.

7 Q. Did you learn from speaking with him that he

8 had been drinking beers in the hotel room with

9 his two other friends that afternoon?

10 MR. GILLIS: Objection.

11 Q. After September 26 did you learn?

12 A. After the restaurant when we left the

13 restaurant?

14 Q. No. In your conversations with Mike Espy after

15 September 26, 2003, did he ever tell you that

16 he had been drinking beers that afternoon,

17 September 26, 2003, before going to the

18 restaurant with two of his friends?

19 A. Before the restaurant?

20 Q. Yes.

21 A. No.

22 Q. He didn't tell you that?

23 A. No.

24 Q. Did he tell you what he had been doing that

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1 afternoon before he came to the restaurant?

2 A. I mean, when you said I've spoken with him,

3 I've spoken to him because my brother is

4 friends with him.

5 He's a little bit closer in age to some of

6 these kids, and he every once in a while will

7 hang out with them.

8 I actually play on an indoor soccer team

9 with Scott, and his brother will come every

10 once in a while and I'll speak to him, but we

11 never discussed that night.

12 Q. Who have you discussed that night with?

13 A. Other than you and people that I have been

14 deposed to talk to or the grand jury or

15 Mr. DiNatale or the state police or anyone else

16 that had me come in and talk to them.

17 Q. You have not spoken to Mr. Gillis prior to

18 today, have you?

19 A. No.

20 Q. How about anyone from his office? Have you

21 spoken to anyone from his office prior to

22 today?

23 A. No.

24 Q. Are you sure?

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1 A. Well, I don't know. I mean --

2 Q. Have you spoken to anybody, other than

3 Mr. DiNatale?

4 A. I know what you're talking about. I spoke

5 to -- I just didn't think he was in the same

6 office.

7 I spoke to Mr. Parkinson. I thought he

8 was in a different office.

9 MR. GILLIS: Let's put on the record

10 there's no one named Parkinson in my office.

11 Q. When did you speak to Mr. Parkinson?

12 A. It was sometime during last semester.

13 Q. Last semester being the semester that ended

14 when?

15 A. About December 21.

16 Q. Of 2005?

17 A. Yes.

18 Q. And your best memory of when it is that you

19 spoke to Mr. DiNatale is when?

20 A. It was over break.

21 Q. Is that after December 21, 2005?

22 A. Yes.

23 Q. When is your best memory?

24 A. Let me think for a minute. I went on vacation.

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1 I had to reschedule this because I was going on

2 vacation just after New Year's, and I remember

3 speaking to him like on the phone.

4 He was saying that I want to meet with

5 you, and then I went on vacation and it was

6 probably two weeks after that, I want to say.

7 Q. When did you come back from vacation?

8 A. I came back, I think like -- Does anyone have a

9 calendar?

10 Q. Give me your best estimate.

11 A. It was probably the eighth of January.

12 Q. And approximately two weeks after that you

13 spoke to Mr. DiNatale; is that right?

14 MR. GILLIS: Objection.

15 A. Yes. So I guess I said it was a month ago, but

16 I guess it was not a month ago.

17 Q. Mr. Parkinson is someone you spoke to before

18 the end of the semester; is that right?

19 A. Correct.

20 Q. The semester ended December 21. What is your

21 best memory of when you spoke to Mr. Parkinson?

22 A. I can't say for sure. I know I met with him

23 two different times, and the first time he

24 asked me some questions about that night, and

<p style="text-align: right;">Page 101</p> <p>1 he came up with an affidavit, something similar</p> <p>2 to this, and then he sent it to me, and he</p> <p>3 wanted me to return it, but then he called me</p> <p>4 and said, "I'll just meet you again to get it</p> <p>5 from you," so he could see me sign so I don't</p> <p>6 have to go to the notary.</p> <p>7 So then I met with him again, and then he</p> <p>8 had to make like a new one or he had to change</p> <p>9 something.</p> <p>10 I remember what it was. He said we were</p> <p>11 dirt biking in Leominster, and I wanted him to</p> <p>12 change it to Templeton, and I had to go to the</p> <p>13 notary and send it to him.</p> <p>14 Q. And who did you understand Mr. Parkinson was</p> <p>15 working for?</p> <p>16 A. He said that he was representing Rare</p> <p>17 Hospitality.</p> <p>18 Q. What is your best memory of when you met with</p> <p>19 Mr. Parkinson?</p> <p>20 A. Maybe mid November, early November.</p> <p>21 Q. And where did you meet with him?</p> <p>22 A. In Leominster at the restaurant Panera Bread.</p> <p>23 Q. P-a-n-e-r-a?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 103</p> <p>1 him just sort of having a notepad, and I went</p> <p>2 through the events of the night, and I'm pretty</p> <p>3 sure that is all we did.</p> <p>4 Q. Do you remember him referring to your</p> <p>5 deposition testimony at all?</p> <p>6 A. No.</p> <p>7 Q. Do you remember him referring to the statement</p> <p>8 you gave the police which has been marked as an</p> <p>9 exhibit in your deposition today, Exhibit 3?</p> <p>10 A. I kind of remember him mentioning that. We</p> <p>11 didn't discuss it, but I remember him</p> <p>12 mentioning that I had made a statement to the</p> <p>13 state police.</p> <p>14 Q. Do you remember him mentioning the affidavit</p> <p>15 that you made in the other case which has been</p> <p>16 marked as Exhibit 4 today?</p> <p>17 A. Well, I remember him saying that or him asking</p> <p>18 me who I have spoken with or who have I been</p> <p>19 deposed by, and I told him I came in here once</p> <p>20 and that I had done the grand jury thing.</p> <p>21 Q. Did he say whether or not he knew you had been</p> <p>22 deposed before?</p> <p>23 A. No.</p> <p>24 Q. Did he seem surprised when you told him you had</p>
<p style="text-align: right;">Page 102</p> <p>1 Q. And who else was there?</p> <p>2 A. It was just me and Mr. Parkinson.</p> <p>3 Q. How old is Mr. Parkinson?</p> <p>4 A. I don't know.</p> <p>5 Q. Did he give you a card?</p> <p>6 A. No. He wrote down a cellphone number, and he</p> <p>7 didn't give me a card.</p> <p>8 Q. Do you still have that information?</p> <p>9 A. No.</p> <p>10 Q. You threw it away?</p> <p>11 A. I just lost track of it.</p> <p>12 Q. How long were you with him that first time?</p> <p>13 A. Well, we met over lunch, so maybe thirty-five</p> <p>14 minutes or so.</p> <p>15 Q. He paid for lunch?</p> <p>16 A. Yes, he did.</p> <p>17 Q. And he was taking notes of your conversation?</p> <p>18 A. He was.</p> <p>19 Q. What was he talking to you about?</p> <p>20 A. Well, he just sort of wanted me to run through</p> <p>21 the events as I remembered them.</p> <p>22 Q. Did he refer to your testimony in the grand</p> <p>23 jury at all?</p> <p>24 A. I don't remember him referring to -- I remember</p>	<p style="text-align: right;">Page 104</p> <p>1 come in here and been deposed?</p> <p>2 A. No.</p> <p>3 Q. Did he seem surprised when you told him that</p> <p>4 you had done the grand jury thing?</p> <p>5 A. No.</p> <p>6 Q. And you were with him thirty-five minutes or</p> <p>7 so; is that right?</p> <p>8 A. Around then.</p> <p>9 Q. Tell me what you remember him saying and what</p> <p>10 you remember yourself saying during that</p> <p>11 meeting.</p> <p>12 A. Well, I remember we kind of introduced</p> <p>13 ourselves. We didn't know each other, and he</p> <p>14 asked me a similar scenario to when I meet with</p> <p>15 people I don't know. They ask me if I'm in</p> <p>16 school, what I'm studying, what kind of things</p> <p>17 I like to do.</p> <p>18 He mentioned that he just moved up here</p> <p>19 with I don't know whether it was his wife or</p> <p>20 fiancée, and I asked him if he had been skiing</p> <p>21 and such and he said a little bit, and he asked</p> <p>22 me where any good places were.</p> <p>23 Q. To do what?</p> <p>24 A. To go skiing, and I mentioned a few places that</p>



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1 I liked, and then he, you know, he told me that  
 2 he wanted me to run through the course of the  
 3 evening as I remembered it.  
 4 Q. So what did you do?  
 5 A. I basically just told him what I remembered,  
 6 starting from when I went to the dirt bike  
 7 track until Scott dropped me off.  
 8 Q. And what did he say during that?  
 9 A. He didn't really say much. He just let me  
 10 talk.  
 11 Q. Just took notes?  
 12 A. Yes.  
 13 Q. Didn't ask you any questions?  
 14 A. He may have. I don't remember him specifically  
 15 asking any questions.  
 16 Q. You just talked?  
 17 A. Yes.  
 18 Q. He said, "What happened? Tell me what  
 19 happened?"  
 20 A. Yes. I remember him saying that he wanted to  
 21 hear the whole story from me as I remember it.  
 22 So he just let me go through the events.  
 23 Q. And did he stop you at any point to ask you  
 24 questions, like how much did Jeff have to

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1 drink?  
 2 A. Yes, he did. Well, I don't know if he asked me  
 3 that question.  
 4 I remember him stopping and asking me  
 5 like, you know, you're going to be asked when  
 6 you go into your deposition how many drinks  
 7 Jeff had and such, when I got to that point in  
 8 the narrative.  
 9 Q. He told you that you would be asked that during  
 10 the deposition; is that right?  
 11 A. Yes.  
 12 Q. And what did he say about that?  
 13 A. He told me that what I remembered is what I  
 14 needed to tell.  
 15 Q. Now, did you tell him at that point that you  
 16 had already been deposed and told what you  
 17 remembered back in August of 2004?  
 18 MR. GILLIS: Objection.  
 19 A. I don't think so. I don't think I made  
 20 reference to that.  
 21 I think I might have said, "Well, I have  
 22 already been deposed." I honestly don't know.  
 23 I never told him that "I said this"  
 24 because I didn't remember.

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1 Q. So when he told you that you were going to be  
 2 asked when you go into the deposition how much  
 3 Jeff had to drink, did he say anything else  
 4 about that?  
 5 A. I believe he asked me if I remembered any, you  
 6 know, noticeable signs of him being drunk or --  
 7 Q. "Noticeable signs"? Is that what he said?  
 8 A. I don't know how he stated it.  
 9 Q. What did you say?  
 10 A. I believe I told him that I didn't see any  
 11 clear signs of him being drunk.  
 12 Q. What else did he say about that?  
 13 A. Well, I don't know. I don't remember. I  
 14 remember that.  
 15 Q. What else do you remember him saying that day?  
 16 A. I remember him saying that I, being the one  
 17 that had not been drinking that night, was kind  
 18 of a big factor in what, I guess, the final  
 19 decision, how the case plays out.  
 20 Q. He told you that?  
 21 A. Yes. One thing I remember specifically about  
 22 when I met with John DiNatale, I remember him  
 23 specifically mentioning these words.  
 24 He said, "Tell the truth and let the cards

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1 fall where they will."  
 2 Q. Did you need DiNatale to tell you to tell the  
 3 truth?  
 4 MR. GILLIS: Objection.  
 5 A. No.  
 6 Q. Tell me what else Mr. Parkinson -- By the way,  
 7 I asked you how old he was. He never gave you  
 8 a card?  
 9 A. No, he didn't.  
 10 Q. Never told you where he worked?  
 11 A. Well, he told me that he had just moved up  
 12 here, and he said where he was living, but I  
 13 don't remember.  
 14 He said he was working in Boston or  
 15 Cambridge or somewhere.  
 16 Q. Working for Rare or representing Rare?  
 17 A. Yes.  
 18 Q. Did he tell you that he was a lawyer?  
 19 A. Yes, an attorney or lawyer. He said he was  
 20 representing Rare Hospitality.  
 21 Q. Your best memory is that this conversation  
 22 occurred in November?  
 23 A. Yes.  
 24 Q. And what else did you say to him or he say to

<p style="text-align: right;">Page 109</p> <p>1 you during that Panera Bread meeting?</p> <p>2 A. Well, he wanted to make sure that after I had</p> <p>3 gone through my narrative that he asked me if</p> <p>4 that's how I remember it and if there's</p> <p>5 anything else I remembered.</p> <p>6 He wanted to make sure that I had told the</p> <p>7 story as I remembered it, and that was pretty</p> <p>8 much it.</p> <p>9 Q. Then he met with you a second time; is that</p> <p>10 right?</p> <p>11 A. He did.</p> <p>12 Q. And how long after the first visit was it that</p> <p>13 you met with Mr. Parkinson again?</p> <p>14 A. Maybe like two weeks.</p> <p>15 Q. Where was that meeting?</p> <p>16 A. It was the same place.</p> <p>17 Q. Lunch again?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Parkinson paid again?</p> <p>20 A. Correct.</p> <p>21 Q. And did he have a document for you at that</p> <p>22 time?</p> <p>23 A. He had talked to me on the phone, and I told</p> <p>24 him that I wanted to make some changes, and</p>	<p style="text-align: right;">Page 111</p> <p>1 all correct. He wanted to have it done.</p> <p>2 Q. Were there any other changes he wanted made in</p> <p>3 that document?</p> <p>4 A. No.</p> <p>5 Q. Did the document speak to how much Jeff had to</p> <p>6 drink that night?</p> <p>7 A. Yes.</p> <p>8 Q. And did the document speak to how much he had</p> <p>9 at the bar?</p> <p>10 A. Yes. I think it more generally spoke about</p> <p>11 everything he had to drink as opposed to what</p> <p>12 he drank here and at the table.</p> <p>13 Q. At the second meeting with Mr. Parkinson, did</p> <p>14 you discuss with him that you had already given</p> <p>15 statements, either in writing or under oath,</p> <p>16 before the grand jury or at a deposition about</p> <p>17 how much Jeff had had to drink?</p> <p>18 A. What do you mean by "discussing"?</p> <p>19 Q. Well, was there any discussion about whether or</p> <p>20 not the document that Mr. Parkinson wanted you</p> <p>21 to sign was going to align with the statements</p> <p>22 you had given earlier both in the grand jury</p> <p>23 and at deposition under oath and the written</p> <p>24 statements?</p>
<p style="text-align: right;">Page 110</p> <p>1 then he brought the document down so that I</p> <p>2 could make the changes and tell him what I</p> <p>3 wanted to change.</p> <p>4 Q. So am I correct that in between the first</p> <p>5 meeting at Panera Bread and the second meeting,</p> <p>6 he sent you a document somehow?</p> <p>7 A. No. If I said that, that's incorrect. He sent</p> <p>8 it after the second meeting.</p> <p>9 Q. There was a second meeting with him?</p> <p>10 A. Yes.</p> <p>11 Q. At the second meeting, did he have a document</p> <p>12 with him?</p> <p>13 A. Yes.</p> <p>14 Q. Did you read the document at the second</p> <p>15 meeting?</p> <p>16 A. Yes.</p> <p>17 Q. There were things in it that were not right?</p> <p>18 A. Yes. As I told you before, he made the</p> <p>19 mistake. It's not essential, but I wanted it</p> <p>20 to be right.</p> <p>21 He said we were dirt biking in the</p> <p>22 Leominster area, and I said well, it was</p> <p>23 technically in Templeton.</p> <p>24 So he said he wanted to make sure it was</p>	<p style="text-align: right;">Page 112</p> <p>1 A. When I ran through the narrative, I'm pretty</p> <p>2 sure I remember him saying, "Well, you know</p> <p>3 what you said here is along the lines of what</p> <p>4 has been said in the grand jury and what other</p> <p>5 people have said." It was something along the</p> <p>6 lines of that.</p> <p>7 Q. Well, were you concerned at all with respect to</p> <p>8 the Parkinson document about whether or not</p> <p>9 what you were saying in the Parkinson document</p> <p>10 was going to align with what you had testified</p> <p>11 to at your deposition back in August?</p> <p>12 A. Well, I didn't really remember what I had said</p> <p>13 in the deposition. So I could not really make</p> <p>14 a judgment on if there were going to be</p> <p>15 differences.</p> <p>16 I just assumed that there was going to be</p> <p>17 what I thought happened.</p> <p>18 MR. FARRAH: Why don't we take a break?</p> <p>19 (Luncheon recess.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p style="text-align: right;">Page 113</p> <p>1 AFTERNOON SESSION</p> <p>2</p> <p>3 Q. So you had a second meeting with Mr. Parkerson;</p> <p>4 is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. And he presented you with a document to sign at</p> <p>7 that meeting?</p> <p>8 A. Yes, he did.</p> <p>9 Q. You didn't like some of the things that were in</p> <p>10 it; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. So what did you do after that with respect to</p> <p>13 Mr. Parkerson?</p> <p>14 A. He went back to his office, and I'm not sure</p> <p>15 what the time frame was, and he came up with a</p> <p>16 new one and sent it to me, and I had to bring</p> <p>17 it to the notary, sign it, and send it back to</p> <p>18 him.</p> <p>19 Q. Did you do that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you keep a copy of that document?</p> <p>22 A. No, I don't think so.</p> <p>23 Q. And did you ever hear from Mr. Parkerson again?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 115</p> <p>1 night?"</p> <p>2 MR. GILLIS: Page, please?</p> <p>3 MR. FARRAH: 19.</p> <p>4 Q. Do you see that question?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember your answer? Can you read it</p> <p>7 for the record?</p> <p>8 A. "I would say that he probably, that he had</p> <p>9 probably two to three beers and a couple of</p> <p>10 Manhattans. I would say he had two beers,</p> <p>11 maybe three. I can't specifically recall."</p> <p>12 Q. Let's try that one more time. Could you read</p> <p>13 it again?</p> <p>14 A. "I would say he had probably two to three beers</p> <p>15 and a couple of Manhattans. I would say he had</p> <p>16 two, maybe three. I can't specifically</p> <p>17 recall."</p> <p>18 Q. And when you were saying "two, maybe three,"</p> <p>19 were you referring to Manhattans in your grand</p> <p>20 jury testimony?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you have any explanation as to why your</p> <p>23 testimony today with respect to how many beers</p> <p>24 he drank at the table that night is different</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Now, do you remember testifying before the</p> <p>2 grand jury?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Do you remember being asked the question, "When</p> <p>5 you were seated once your table was available,</p> <p>6 do you know if you checked out at the bar, or</p> <p>7 did the tab move to the table?"</p> <p>8 Do you remember being asked that question?</p> <p>9 MR. GILLIS: What page are you reading</p> <p>10 from?</p> <p>11 MR. FARRAH: 17.</p> <p>12 A. I don't know.</p> <p>13 Q. Do you remember your answer? Can you read it</p> <p>14 into the record?</p> <p>15 A. "I'm pretty sure we checked out at the bar."</p> <p>16 Q. And do you have any explanation as to why your</p> <p>17 testimony is now different from what you</p> <p>18 testified to the grand jury on the question of</p> <p>19 whether or not the bar tab went to the table?</p> <p>20 MR. GILLIS: Objection.</p> <p>21 A. No.</p> <p>22 Q. Do you remember being asked the question before</p> <p>23 the grand jury, "What do you believe Jeffrey</p> <p>24 Southworth had to drink at the table that</p>	<p style="text-align: right;">Page 116</p> <p>1 from what you testified to before the grand</p> <p>2 jury?</p> <p>3 MR. GILLIS: Objection.</p> <p>4 A. The bill.</p> <p>5 Q. Seeing the bill with Mr. DiNatale?</p> <p>6 A. Just seeing the bill, I mean, shows that there</p> <p>7 are two.</p> <p>8 Q. Two beers that were served at the table?</p> <p>9 A. Yes.</p> <p>10 Q. One at 8:40 and the other one at 9:15?</p> <p>11 A. Correct.</p> <p>12 Q. What is it about those two beers that were</p> <p>13 served at the table that is inconsistent with</p> <p>14 your testimony before the grand jury that Jeff</p> <p>15 probably had two to three beers with dinner at</p> <p>16 the table?</p> <p>17 A. Well, I said that there were two to three beers</p> <p>18 drinking at the table, and there were only two</p> <p>19 beers ordered to the table.</p> <p>20 So I know that the three is out of the</p> <p>21 question, and I believe that Scott was drinking</p> <p>22 beer at the table as well.</p> <p>23 So I can't say for sure, but I presume</p> <p>24 that one of the beers ordered at the table in</p>

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1 Exhibit 2 went to him but I didn't log it in.  
 2 I can't say for sure.  
 3 Q. You presume one of the beers that is shown on  
 4 Exhibit 2 went to him while he was at the  
 5 table?  
 6 A. Yes.  
 7 Q. And the other beer, you presume, went to Jeff  
 8 while he was sitting at the table?  
 9 MR. GILLIS: Objection.  
 10 A. Yes.  
 11 Q. So help me out with your testimony this morning  
 12 that you had discussions with Mr. DiNatale  
 13 about the beers reflected on Exhibit 2 are the  
 14 beers that were served at the bar.  
 15 A. What is that again?  
 16 Q. Before you saw what has been marked as  
 17 Exhibit 2, you testified at the grand jury that  
 18 your best memory was Jeff had two to three  
 19 beers while he was sitting at dinner; is that  
 20 right?  
 21 MR. GILLIS: Objection.  
 22 A. Yes.  
 23 Q. Do you see it?  
 24 A. Yes.

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1 Q. Before you saw Exhibit 2, you testified at your  
 2 deposition that Jeff had maybe four beers while  
 3 he was sitting at the table; is that correct?  
 4 MR. GILLIS: Objection.  
 5 Q. Do you remember that testimony?  
 6 A. Yes. It's in here.  
 7 Q. And before you saw Exhibit 2, you gave a  
 8 written statement to Trooper Sullivan, which  
 9 has been marked as Exhibit 3 in this  
 10 deposition, that Jeff had a couple of beers,  
 11 maybe two, and three drinks at dinner. Do you  
 12 see that?  
 13 A. Yes.  
 14 Q. And is it accurate to say that except for what  
 15 you believe Exhibit 2 shows, your earlier  
 16 testimony regarding the number of beers he had  
 17 at the table is your best memory of what he had  
 18 at the table?  
 19 MR. GILLIS: Objection.  
 20 A. Yes.  
 21 Q. Before you saw Exhibit 2, your best memory  
 22 regarding the number of Jack Daniels Manhattans  
 23 that Jeff had with dinner is what is reflected  
 24 in your grand jury testimony and your

1 deposition; is that right?  
 2 A. Yes.  
 3 Q. And before you saw Exhibit 2, your best memory  
 4 about how many beers Jeff had at the bar is  
 5 what is reflected in your deposition; is that  
 6 right?  
 7 MR. GILLIS: Objection.  
 8 A. Yes.  
 9 Q. Now, Exhibit 2 indicates that the check was  
 10 paid at 9:57 p.m. Do you see that?  
 11 A. Yes.  
 12 Q. And after paying the check, where did you go?  
 13 I'm sorry. You did not pay for yourself; is  
 14 that right?  
 15 A. Correct.  
 16 Q. Jeff paid for you?  
 17 A. Yes.  
 18 Q. Once the check was paid, you left the  
 19 restaurant; is that right?  
 20 A. Yes.  
 21 Q. And that was about 9:57 p.m.; is that right?  
 22 MR. GILLIS: Objection.  
 23 A. Yes, or shortly after.  
 24 Q. And where did you go?

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1 A. We went to the hotel that the two people that I  
 2 didn't know were staying at.  
 3 Q. And had the seating arrangement in the car  
 4 changed or the truck changed at that point?  
 5 A. Yes.  
 6 Q. You were in the front; is that right?  
 7 A. I think so, yes.  
 8 Q. Jeff was in the back with his dogs; is that  
 9 right?  
 10 A. Yes.  
 11 Q. Can you tell me why Jeff went in the back with  
 12 the dogs?  
 13 A. Other than the fact that the dogs are  
 14 Rottweilers and they had been in the truck for  
 15 quite some time, you know, maybe he wanted -- I  
 16 can't say. I don't know.  
 17 Q. Did he say anything about why he wanted to go  
 18 in the back with the dogs?  
 19 A. No.  
 20 Q. Did he fall asleep in the back with the dogs  
 21 during the trip out of the Longhorn?  
 22 A. No.  
 23 Q. And where did you go from there?  
 24 A. To the hotel.



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1 Q. Which hotel?

2 A. I think it's called the Four Points or Four  
3 Seasons or Four something.

4 Q. And what did you do there?

5 A. The two people that were staying there, they  
6 wanted to go change or they went into their  
7 room, and we were waiting outside in the  
8 hallway, and we were talking to these two guys  
9 that were there.

10 There was a music festival that was going  
11 on at the airport next to the hotel. So there  
12 were a lot of people staying there, and there  
13 were two bouncers or security guards for a  
14 certain band who we were talking to out in the  
15 hall.

16 Q. And where was Jeff while you guys were at the  
17 Four Points Hotel?

18 A. He was in the hallway with us.

19 Q. By the way, just a few wrap-up type questions.  
20 I may have asked you this already.

21 What was the age of the waitress who  
22 served you guys?

23 MR. GILLIS: Objection.

24 Q. Can you estimate for me the age of the waitress

1 already. I know I asked you in the Superior  
2 Court case. The size of the container of the  
3 beers that Jeff had or whatever amount of beer  
4 he had at the bar and whatever amount he had at  
5 the table, they were all in the same size  
6 container; is that right?

7 MR. GILLIS: Objection.

8 A. Yes.

9 Q. Were they all in the same size container -- the  
10 beers at the table and the beers at the bar?

11 MR. GILLIS: Objection.

12 A. I believe so.

13 Q. And then from the hotel, where did you all go?

14 A. We went to the Other Side, which is a strip  
15 club.

16 Q. Approximately, how long were you at the hotel,  
17 best memory?

18 A. Anywhere from half an hour to forty minutes.

19 Q. Okay, and how long did it take you to get from  
20 the Longhorn to the hotel?

21 A. Maybe like five minutes. It's pretty close.

22 Q. Do you remember testifying ten to fifteen  
23 minutes before?

24 A. I think so.

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1 that served you guys?

2 A. Early to mid twenties.

3 Q. Okay, and do you have a memory of whether or  
4 not any other waitresses or waiters served your  
5 table that night?

6 A. I don't believe so.

7 Q. Did you say you had steak that night or ribs?

8 A. I think I told you I had ribs.

9 Q. Do you remember you had ribs or are you not  
10 sure?

11 A. I thought I had ribs. I'm not 100 percent sure  
12 on it.

13 Q. Okay. You were not wearing a watch that night;  
14 is that right?

15 A. Yes.

16 Q. And did Jeff have anything to drink while you  
17 were at the Four Points?

18 A. He did.

19 Q. What did he have there?

20 A. He had a beer.

21 Q. Twelve-ounce? Sixteen-ounce? Do you know?

22 A. I think it was a twelve-ounce. I'm pretty sure  
23 it was a can.

24 Q. And am I correct -- I think I asked you this

1 MR. GILLIS: What page?

2 MR. FARRAH: Page 53.

3 Q. Is it is your best memory as you sit here today  
4 it was ten minutes more or less?

5 MR. GILLIS: Objection.

6 A. Yes.

7 Q. And then you drove from the hotel to the strip  
8 club; is that right?

9 A. Correct.

10 Q. Who was in the car when you did that?

11 A. It was myself, Scott, his brother Mike and  
12 Jeff.

13 Q. Had Mike been in the car on the trip from the  
14 Longhorn to the hotel?

15 A. He was not.

16 Q. What was the seating arrangement in the ride  
17 from the hotel to the strip club?

18 A. I was in the passenger seat, and Scott was  
19 driving, and Jeff and Mike were in the back.

20 Q. Was Jeff asleep on the ride to the strip club?

21 MR. GILLIS: Objection.

22 A. I don't think so.

23 Q. Was the plan initially to go into the strip  
24 club?

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1 A. It was.  
 2 Q. But that changed at some point in time; is that  
 3 right?  
 4 A. Yes.  
 5 Q. And what brought about that change?  
 6 A. Well, I actually didn't even want to go to  
 7 dinner. I wanted to go back, so Jeff offered  
 8 to buy me dinner and I said yes, and then when  
 9 we were going there, I probably said something  
 10 like I had class in the morning.  
 11 I honestly don't remember how we came to  
 12 the decision, but I think Scott and I decided  
 13 we didn't want to stay out too much later.  
 14 Q. Okay, and so you guys did not go to the strip  
 15 club; is that right?  
 16 A. Correct.  
 17 Q. But you dropped off Scott's brother there; is  
 18 that right?  
 19 A. Yes.  
 20 Q. And then where did you go from the Other Side?  
 21 A. We went to the apartment or housing complex  
 22 where Scott's truck was in Littleton.  
 23 Q. Approximately, how long did it take you guys to  
 24 go from the Other Side to the apartment complex

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1 in Littleton?  
 2 A. Maybe thirty to thirty-five minutes.  
 3 Q. And the apartment complex is just off of  
 4 Route 495; is that right?  
 5 A. Yes.  
 6 Q. And was there any discussion on route between  
 7 some or all of the three about whether or not  
 8 Jeff should drive his truck?  
 9 A. Not that I remember.  
 10 Q. Do you remember anyone saying in effect, "Jeff,  
 11 you're too drunk to drive"?  
 12 MR. GILLIS: Objection.  
 13 A. No.  
 14 Q. Where was Jeff on the ride from the Other Side  
 15 to the apartment complex?  
 16 A. He was in the back.  
 17 Q. Still in the back?  
 18 A. Yes.  
 19 Q. Sleeping or awake?  
 20 A. He was awake, I'm pretty sure.  
 21 Q. And when you got to the apartment complex, what  
 22 happened?  
 23 A. Well, I jumped out and I grabbed my bag off the  
 24 back of the truck, and actually, I don't know

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1 if I had my bag with me.  
 2 I know I had to grab something, some sort  
 3 of dirt biking gear. It might have been my  
 4 boots or something. I jumped off and brought  
 5 it over to Scott's truck.  
 6 Q. Then what happened?  
 7 A. Jeff left.  
 8 Q. Jeff left the apartment complex?  
 9 A. Correct.  
 10 Q. So he left the back seat and got into the  
 11 driver's side?  
 12 A. Yes.  
 13 Q. Did something happen when Jeff was leaving the  
 14 apartment complex?  
 15 A. Yes.  
 16 Q. What happened?  
 17 A. Actually, I didn't see it, but apparently, he  
 18 must have backed over or ran over part of  
 19 Scott's foot.  
 20 Q. Did you hear Scott say something as Jeff was  
 21 leaving or soon after Jeff left?  
 22 A. Yes, soon after.  
 23 Q. What did he say?  
 24 A. He started complaining about his ankle hurting,

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1 and he said that he backed over it, ran over  
 2 it.  
 3 Q. Do you remember while you were at the  
 4 restaurant the waitress asking anyone in your  
 5 group for an ID, some proof of age?  
 6 A. I don't recall.  
 7 Q. Do you remember? That is my question.  
 8 A. I do not remember anyone being IDed.  
 9 Q. Do you remember anyone being IDed at the bar?  
 10 A. Well, I don't remember that either.  
 11 Q. Okay. Now, after Scott made some statement  
 12 about Jeff running over his foot, what happened  
 13 next?  
 14 A. We went to get into Scott's truck, and he  
 15 realized he didn't have his keys.  
 16 Q. Okay. So what happened at that point?  
 17 A. We tried calling Jeff to let him know that he  
 18 had to turn around and bring us the keys.  
 19 Q. And you called from a cellphone; is that right?  
 20 A. Yes.  
 21 Q. How long did it take you to get through to  
 22 Jeff?  
 23 A. Maybe five, ten minutes.  
 24 Q. And what was the conversation that you had with

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1 Jeff at that point? Was it you, by the way,  
2 that had the conversation?  
3 A. I believe it was. I know from that point on,  
4 there were two conversations with him.  
5 Q. Tell me about the first one.  
6 A. I told him that he had the keys -- he had  
7 Scott's keys -- and that he had backed over  
8 Scott's foot when he was leaving.  
9 Q. And what did Jeff say?  
10 A. He didn't say much. I don't even quite  
11 remember him telling me he was going to turn  
12 around.  
13 Q. And again, the apartment complex which in the  
14 parking lot of which you were calling Jeff from  
15 that night was located how far from Route 495?  
16 A. One hundred yards.  
17 Q. And so after that conversation with Jeff, did  
18 you see Jeff later on that night?  
19 A. No.  
20 Q. At some point in time after that conversation  
21 with Jeff, did you try to have another  
22 conversation with him? Did you try to call him  
23 on the phone?  
24 A. Yes.

1 A. Yes.  
2 Q. What did you do?  
3 A. We broke into the truck by smashing out the  
4 sliding glass door in the back windshield.  
5 Q. On the back?  
6 A. Yes. We knew he had a spare key in the car.  
7 Q. And after you had cleared away whatever you  
8 needed to clear away to get into the car, what  
9 did you do next?  
10 A. I don't know whether we had talked to Jeff at  
11 that point or we started driving.  
12 We must have talked to him again by that  
13 point because we would have just gone back  
14 home.  
15 Q. Do you remember having a second conversation  
16 with Jeff that night after he left the  
17 apartment complex parking lot?  
18 A. Yes.  
19 Q. Was that conversation with you or with Scott?  
20 A. I believe it was with me.  
21 Q. Tell me what you remember about that  
22 conversation.  
23 A. I remember him saying -- Yes, it was with me.  
24 I remember him saying he had been in an

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1 Q. Did you wait for Jeff to come back?  
2 A. We did.  
3 Q. Can you tell me approximately how long you  
4 waited for Jeff to come back?  
5 A. Probably close to twenty minutes.  
6 Q. Do you remember testifying at your  
7 deposition -- this is on page 66 -- that it was  
8 probably maybe half an hour that you waited?  
9 A. Okay.  
10 Q. Do you see that?  
11 A. It could have been a half an hour. I'm sure  
12 that this is more accurate than what I remember  
13 today.  
14 Q. Your deposition?  
15 A. Yes.  
16 Q. In all respects?  
17 MR. GILLIS: Objection.  
18 A. In that respect at least.  
19 MR. GILLIS: I move to strike that last  
20 comment.  
21 MR. FARRAH: I thought we were reserving  
22 motions to strike until trial.  
23 Q. At some point in time did the two of you take  
24 some action to be able to drive the truck?

1 accident and that I was like immediately,  
2 "Where are you," and he didn't really say that  
3 much.  
4 I'm pretty sure it got cut off, and we  
5 decided to go try and find the accident. We  
6 didn't know what happened.  
7 Q. So was it at that point that you got on 495?  
8 A. Yes.  
9 Q. If you had been heading home that night as  
10 opposed to looking for Jeff, which way would  
11 you have headed on 495 from the apartment  
12 complex?  
13 A. We would not have gotten on 495.  
14 Q. At all?  
15 A. Correct.  
16 Q. When you got on 495, in which direction did you  
17 head?  
18 A. North.  
19 Q. Why was that?  
20 A. Jeff was going home, which was north.  
21 Q. Where did you understand he lived at that time?  
22 A. In Portsmouth.  
23 Q. New Hampshire?  
24 A. Yes.

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1 Q. And when you got on 495 North, what happened?

2 A. Well, we drove and we didn't see anything and

3 we were going to turn around, and then we

4 decided to drive a little bit farther, and as

5 we were getting close to the Westford exit, we

6 saw an accident scene with like all sorts of

7 ambulances and police cars and just a lot of

8 emergency vehicles, lights going on the

9 southbound side.

10 Q. The southbound side of 495?

11 A. Yes.

12 Q. How many exits down from where the apartment

13 complex was, was it that you had traveled

14 before you saw the accident scene?

15 A. I think Westford is two up from where we got

16 on.

17 Q. Had you passed the Westford exit when you saw

18 this accident scene?

19 A. No.

20 Q. So this was before the Westford exit on 495

21 North that you saw the accident scene on the

22 other side of the highway; is that right?

23 A. Yes.

24 Q. What did you do?

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1 A. We got off at the Westford exit, and we started

2 heading southbound so we could drive by the

3 accident.

4 Q. Did you call Jeff at all during that time?

5 A. Yes.

6 Q. And were you able to reach him at all?

7 A. No.

8 Q. What did you see when you drove by on 495

9 southbound now?

10 A. We couldn't see anything. It looked like an

11 accident. All we could see was police cars and

12 the police and EMTs and ambulances.

13 We didn't see any cars that had been in an

14 accident, specifically the truck. That was

15 what we were looking for and the dirt bikes.

16 Q. And did you make any other efforts to find Jeff

17 that night?

18 A. Yes.

19 Q. What were those efforts? Describe those for

20 me, if you could.

21 A. We circled back up north to get off of the

22 Westford exit again.

23 Q. Then what happened?

24 A. No, that's incorrect. We didn't circle back

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1 yet. We got off at the Littleton exit.

2 We drove on this back road and tried

3 calling him and telling him. I think we left

4 him a voice mail saying, "Where are you? Are

5 you all right? Give us a call. Let us know

6 what is going on," but we could not get ahold

7 of him.

8 So what we did was we decided to drive up

9 to Westford again one more time to see if we

10 could see if that was his accident, if we could

11 see his truck.

12 Q. Did you have any luck?

13 A. No.

14 Q. Prior to September 26, 2003, had you ever seen

15 Jeff when you believed he was under the

16 influence of alcoholic beverages?

17 A. I think so once.

18 Q. Did he exhibit some of the same signs you saw

19 the night of September 26, 2003 that night?

20 MR. GILLIS: Objection.

21 A. You know, I'd seen him when I thought he was a

22 little bit drunk, but I mean I just assumed

23 that he was drunk. I cannot say that he was.

24 It was at that party that I mentioned before.

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1 Q. Were people drinking at that party?

2 A. Yes. That's why I assumed he was drunk.

3 Q. What sorts of things did he exhibit that led

4 you to assume he was drunk?

5 A. Well, I didn't notice anything he was

6 exhibiting. I sort of just figured that he was

7 drunk or on his way to being drunk since he had

8 been at the party and other people were there,

9 and they were drinking.

10 Q. Was he louder than usual at that party?

11 A. I didn't notice him being loud.

12 Q. Were his eyes glassy at all at the party?

13 A. I could not tell you.

14 Q. What is it that led you to say a few moments

15 ago that he had exhibited signs of intoxication

16 in the past to you?

17 A. Actually, I remember one thing. When we went

18 outside, he was getting one of his dogs all

19 riled up.

20 They're Rottweilers. So they can be

21 nasty. I mean they're pretty good dogs.

22 I remember him getting one of them all

23 riled up and like kind of pointing to someone

24 because he was a very well-behaved dog, and if



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1 you pointed at someone and you started going  
 2 after them, say you grabbed his arm, the dog  
 3 would jump up on him and try to think he needed  
 4 to protect him, and I remember that happened.  
 5 That was something that he normally didn't do.  
 6 Q. My question to you is, what is it that he was  
 7 exhibiting that night prior to September 26,  
 8 2003 that leads you to say he was exhibiting  
 9 signs of being intoxicated?  
 10 A. It would be getting his dog all riled up.  
 11 Q. Anything else?  
 12 A. No.  
 13 Q. You're sure?  
 14 A. Yes. I was not really paying attention that  
 15 well. I was not even there that long.  
 16 Q. But you believed he was exhibiting signs of  
 17 intoxication that night; is that right?  
 18 A. Yes.  
 19 Q. Okay. Now, at some point in time, did you meet  
 20 with the police to talk about the events of  
 21 September 26?  
 22 A. The state police?  
 23 Q. Any police.  
 24 A. I remember going to the state police in Concord

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1 and talking to one of the troopers.  
 2 Q. Trooper Sullivan?  
 3 A. Yes.  
 4 Q. How long was that after the accident?  
 5 A. I think it was pretty short. I can't say for  
 6 sure. It was a couple of days.  
 7 Q. Did you tell him what had happened that night?  
 8 A. I told him a little about what happened, but he  
 9 wanted me to just write it all down.  
 10 Q. Okay, and did you write it all down for him?  
 11 A. Yes.  
 12 Q. Now, what has been marked as Exhibit 3 in your  
 13 deposition has a date of November 2, 2003,  
 14 3:25 p.m. Do you see that?  
 15 A. Yes.  
 16 Q. That's five-and-a-half weeks, six weeks after  
 17 the accident; can we agree?  
 18 A. Yes.  
 19 Q. Do you remember that you had met with him  
 20 before November 2, 2003? This is Trooper  
 21 Sullivan.  
 22 A. No.  
 23 Q. Do you remember only one meeting with  
 24 Trooper Sullivan?

1 A. Yes. I remember him calling me and telling me  
 2 that he wanted me to meet with him, and he  
 3 could come down or I could come down and meet  
 4 him, and I said I would come down, and I think  
 5 it was the same day that I talked to him and  
 6 went down there.  
 7 Q. But it was five weeks after the accident?  
 8 A. Yes.  
 9 Q. That refreshes your memory?  
 10 A. Yes.  
 11 Q. In between that time, September 26, 2003 and  
 12 November 2, 2003, did you give anybody else any  
 13 statements about the accident?  
 14 A. I don't think so.  
 15 Q. Or about that night, did you give anybody else  
 16 any statements about that night?  
 17 A. No.  
 18 Q. When did you learn that Jeff had been in this  
 19 accident?  
 20 A. It was the next day. A friend of mine called  
 21 me and told me that he saw the accident on the  
 22 news and that he saw something about Jeff being  
 23 in an accident on the news.  
 24 Q. Can you just describe how it was that you gave

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1 this statement to the state police?  
 2 A. Yes. I went into the barracks and I had to  
 3 give them some ID and show them who I was, and  
 4 they took me into one of the offices and sat me  
 5 down and asked me if I was with Jeff that night  
 6 and if I was in fact Jude and some questions  
 7 like that.  
 8 Then he said, "All right. Now, I want you  
 9 to write what you remember down and give me a  
 10 statement on paper."  
 11 Q. And that's what you did?  
 12 A. Yes.  
 13 Q. How long were you with him that day?  
 14 A. It was probably under an hour. It was not  
 15 extremely long.  
 16 Q. Anybody else there besides the trooper and you?  
 17 A. No.  
 18 Q. Was your meeting tape recorded, do you know?  
 19 A. I don't know.  
 20 Q. Was your meeting with DiNatale tape recorded?  
 21 A. I don't think so.  
 22 Q. How about with the lawyer -- I can't remember  
 23 his name now -- Parkerson, was that tape  
 24 recorded?

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1 A. I don't think so.  
 2 Q. Did anybody ask you for permission to tape  
 3 record in any of the meetings you had to  
 4 discuss what happened?  
 5 A. I kind of remember someone asking me, but I  
 6 don't know whether it was one of these meetings  
 7 or a meeting where I was in a place in here.  
 8 Maybe it might have been when I had to  
 9 testify -- I can't say for sure. I just  
 10 remember someone saying, "I'm going to be tape  
 11 recording you."  
 12 Q. Is that your handwriting on Exhibit 3?  
 13 A. Yes.  
 14 Q. And did anybody in any way influence what you  
 15 wrote on Exhibit 3 at the time you were writing  
 16 it?  
 17 A. No.  
 18 Q. Did anybody put words in your mouth?  
 19 A. No.  
 20 Q. Did anybody suggest anything to you?  
 21 A. No.  
 22 Q. And then you testified at the grand jury; is  
 23 that right?  
 24 A. Yes.

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1 Q. And did you testify truthfully before the grand  
 2 jury to the best of your ability?  
 3 A. Yes.  
 4 Q. And approximately how long was that after the  
 5 meeting with the state trooper, if you know?  
 6 A. I don't know. I think it was sometime after.  
 7 Q. And then in between then, when you testified  
 8 before the grand jury and when you testified at  
 9 your deposition in August of 2004, did anybody  
 10 that you understood was representing anyone  
 11 involved in either a civil or criminal lawsuit  
 12 contact you to discuss what happened the  
 13 evening of September 26, 2003?  
 14 A. No.  
 15 Q. And when you came to testify on August of 2004,  
 16 that was the first time we had spoken?  
 17 A. Yes.  
 18 Q. After testifying on August of 2004, and with  
 19 the exception of Mr. Parkerson and  
 20 Mr. DiNatale, has anyone spoken to you about  
 21 the events of September 26, 2003 whom you have  
 22 understood was working for any defendant in any  
 23 civil lawsuit?  
 24 A. No.

1 MR. FARRAH: Michael, I think I'm just  
 2 about done. Give me a minute to run out and  
 3 I'll be right back.  
 4 (Short recess.)  
 5 Q. Did you sign a statement for DiNatale?  
 6 A. No.  
 7 Q. You did sign a statement for Parkerson?  
 8 A. Yes.  
 9 Q. You're sure you didn't sign a statement for  
 10 DiNatale?  
 11 A. I don't remember. I don't know.  
 12 Q. It was not that long ago -- two weeks.  
 13 A. It was a little bit longer than that.  
 14 Q. But you don't remember?  
 15 A. I don't remember.  
 16 MR. FARRAH: Thanks. I'm done.  
 17  
 18 CROSS-EXAMINATION  
 19  
 20 BY MR. GILLIS:  
 21 Q. Mr. Connelly, you have in front of you  
 22 Exhibit 3, your statement there, and when you  
 23 said in that statement that he had a couple of  
 24 beers, maybe two and maybe three drinks, that

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1 was the total amount of drinks that you think  
 2 he might have had at the restaurant; is that  
 3 right?  
 4 MR. FARRAH: Objection.  
 5 A. Correct.  
 6 Q. Let me ask it a different way. From looking at  
 7 your statement, can you tell me how many drinks  
 8 you thought Mr. Southworth maybe had at the  
 9 restaurant?  
 10 A. In total?  
 11 MR. FARRAH: Objection. Are you looking  
 12 at Exhibit 3?  
 13 MR. GILLIS: Yes.  
 14 A. It would be maybe five.  
 15 Q. Was that everything at the restaurant or just  
 16 at the table?  
 17 MR. FARRAH: Objection.  
 18 A. I believe that was at the restaurant, not at  
 19 the table.  
 20 Q. Is it your memory that the beers that were  
 21 gotten at the bar were brought over to the  
 22 table?  
 23 MR. FARRAH: Objection.  
 24 A. Yes.

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1 Q. This is dated November 2, 2003. That's when  
 2 that was actually done by you, correct?  
 3 A. Yes.  
 4 Q. Your memory was a lot fresher back then as to  
 5 the events of this, correct?  
 6 A. Yes.  
 7 Q. You said that you left approximately 11:00, is  
 8 that correct, the restaurant?  
 9 A. Yes.  
 10 Q. Give or take a few minutes?  
 11 A. Yes.  
 12 Q. It could have been 10:30; it could have been  
 13 11:30?  
 14 MR. FARRAH: Objection.  
 15 A. It was probably not later. It was probably,  
 16 you know, 11:00 or before.  
 17 Q. Subsequently, you were under oath when you gave  
 18 your grand jury testimony, correct?  
 19 A. Yes.  
 20 Q. You said "probably two, maybe a couple of  
 21 Manhattans" on page 9 of your sworn testimony.  
 22 A. Correct.  
 23 Q. At the end of that you were asked, were you  
 24 not, whether or not Mr. Southworth was

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1 exhibiting any change in his demeanor at any  
 2 time? Do you remember being asked that?  
 3 MR. FARRAH: What page is that?  
 4 MR. GILLIS: Page 34.  
 5 A. Yes.  
 6 Q. That was a lot closer to the time of this  
 7 accident than today, correct?  
 8 A. Correct.  
 9 Q. Did they put your statement in as an exhibit  
 10 when you were at the grand jury?  
 11 A. Yes.  
 12 Q. That was the fifth of November of 2003,  
 13 correct?  
 14 A. Yes.  
 15 Q. That was when you said that there was no change  
 16 at any time in his demeanor while he was at the  
 17 Longhorn; is that correct?  
 18 A. Yes.  
 19 Q. You testified there that you had known him for  
 20 about a year prior to this accident, correct?  
 21 A. Yes.  
 22 Q. Do you know him primarily from dirt bike  
 23 racing, or how did you know him?  
 24 A. I knew him from dirt bike racing.

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1 Q. You had known him long enough to know whether  
 2 his demeanor was changing, correct?  
 3 MR. FARRAH: Objection.  
 4 A. The only time that I believed that he was drunk  
 5 was the time that I had seen him at the party.  
 6 Q. That was not the question. You've known him  
 7 long enough that you would be able to tell  
 8 whether or not his demeanor was changing on the  
 9 night of September 26, 2003, correct?  
 10 A. Yes.  
 11 Q. Now, those are the statements that you gave  
 12 before lawyers got involved in the case,  
 13 correct?  
 14 A. Yes.  
 15 Q. Then you met with Mr. Farrah, correct?  
 16 MR. FARRAH: Objection.  
 17 A. Yes.  
 18 Q. When did you first meet with him?  
 19 A. It was over a year. I honestly don't know.  
 20 Q. How many times have you met with Mr. Farrah?  
 21 A. Only once, besides today.  
 22 Q. When was that?  
 23 A. I don't know. It was sometime after the grand  
 24 jury.

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1 Q. Before your deposition?  
 2 MR. FARRAH: Are you asking him did we  
 3 meet before his deposition?  
 4 MR. GILLIS: Yes.  
 5 MR. FARRAH: Objection to the form.  
 6 A. The deposition, was that the grand jury?  
 7 MR. FARRAH: This is your deposition,  
 8 right here (pointing to transcript).  
 9 A. When was this taken? I thought the deposition  
 10 was when I met with Mr. Farrah.  
 11 Q. You came in before a situation like this and  
 12 gave a deposition?  
 13 A. Yes.  
 14 Q. Prior to that, had you met with anybody from  
 15 Mr. Farrah's office?  
 16 A. No.  
 17 Q. Then you met with his office, didn't you, to  
 18 put together an affidavit?  
 19 A. Yes.  
 20 Q. Who wrote that up for you?  
 21 A. I don't know.  
 22 Q. Who contacted you and asked you to do an  
 23 affidavit for them? Was that Mr. Farrah's  
 24 office?

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1 A. Yes.  
 2 Q. And did they send you that in the mail, or did  
 3 you come in to sign it?  
 4 A. They sent it to me.  
 5 Q. Do you know who from the office you spoke with?  
 6 A. No. I presume it was Mr. Farrah.  
 7 Q. Was it a male or a female?  
 8 A. I don't know.  
 9 Q. Do you remember what you spoke about?  
 10 A. Just, you know, they were going to send it to  
 11 me and I needed to sign it and get it back to  
 12 them.  
 13 Q. You also testified at trial in this matter,  
 14 correct?  
 15 A. Correct.  
 16 Q. And you were under oath at that time, correct?  
 17 A. Correct.  
 18 Q. You didn't have any of the lawyers in this room  
 19 forming the questions that you were answering,  
 20 correct?  
 21 A. Correct.  
 22 Q. At that trial do you remember testifying that  
 23 you had a Sprite and some food at the  
 24 restaurant?

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1 A. Yes.  
 2 Q. Do you remember testifying that there was  
 3 nothing unusual at all that evening at the  
 4 Longhorn as to how Mr. Southworth was speaking  
 5 or walking?  
 6 MR. FARRAH: Objection.  
 7 A. Yes.  
 8 Q. Do you remember testifying that Mr. Southworth  
 9 brought the beer that he got at the bar with  
 10 him to the table?  
 11 MR. FARRAH: Objection.  
 12 A. Yes.  
 13 Q. Prior to Mr. Farrah in 2004 suggesting  
 14 different signs of inebriation, did you ever  
 15 testify anywhere that Mr. Southworth showed any  
 16 signs of inebriation that evening?  
 17 A. I don't believe so.  
 18 Q. You didn't say it to the police, correct?  
 19 A. No.  
 20 Q. You didn't put it in your statement, did you?  
 21 A. No.  
 22 Q. You didn't say it at the grand jury, did you?  
 23 A. No.  
 24 Q. You didn't testify at trial to that, did you?

1 A. No.  
 2 Q. In fact, when you were asked the first time by  
 3 Mr. Farrah what signs were exhibited, you said,  
 4 "I don't know"; isn't that correct?  
 5 MR. FARRAH: Objection.  
 6 Q. Page 49, "What did he show? What did he  
 7 manifest that makes you say that?" "I don't  
 8 know."  
 9 That's the first part of your answer,  
 10 correct?  
 11 A. Yes.  
 12 Q. It was not until he suggested to you that he  
 13 was sloppier that you said, "A little bit,  
 14 yes," correct?  
 15 MR. FARRAH: Objection. The record is the  
 16 record.  
 17 A. Correct.  
 18 Q. It was not until he suggested that he was  
 19 louder that you said yes, correct?  
 20 MR. FARRAH: Objection.  
 21 A. Correct.  
 22 Q. It was not until he suggested that he was  
 23 boisterous that you ever thought about it as a  
 24 possibility, correct?

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1 MR. FARRAH: Objection.  
 2 A. Correct.  
 3 Q. But even then you said he was not boisterous,  
 4 correct?  
 5 MR. FARRAH: Objection.  
 6 A. Correct.  
 7 Q. You said his speech was not slurred, correct?  
 8 A. Correct.  
 9 Q. And when Mr. Farrah asked about his glassy  
 10 eyes, you said, "I don't remember specifically  
 11 seeing his eyes." Do you remember saying that?  
 12 MR. FARRAH: Objection.  
 13 A. Yes.  
 14 Q. As you sit here today, can you honestly say  
 15 whether or not his eyes were glassy that  
 16 evening?  
 17 MR. FARRAH: Objection.  
 18 A. No.  
 19 Q. Prior to Mr. Farrah suggesting these things in  
 20 the deposition, you've never told anybody that  
 21 he had glassy eyes, correct?  
 22 MR. FARRAH: Objection.  
 23 A. No.  
 24 Q. You never told anybody that he was louder than



1 normal, correct?

2 MR. FARRAH: Objection.

3 A. No.

4 Q. You never told anybody that he was sloppier  
5 looking than he usually is, correct?

6 MR. FARRAH: Objection.

7 A. No.

8 Q. Now, I know that you've tried your best at  
9 these various times to give the best answers  
10 that you can, but I want you to think back.

11 From the time that you gave testimony at  
12 the grand jury saying nothing changed about his  
13 demeanor to the time that you testified at your  
14 deposition with Mr. Farrah back in 2004, did  
15 you learn anything that changed your opinion of  
16 what happened that evening?

17 MR. FARRAH: Objection.

18 A. No.

19 Q. By the way, was anyone from Rare there at that  
20 deposition, do you remember?

21 A. I don't know.

22 Q. Now, the first time that you were asked what  
23 Mr. Southworth had to drink that evening, you  
24 said, I believe, that he had a beer; isn't that

1 Q. You didn't have anything to drink at the sand

2 pit, correct, any alcohol?

3 A. No.

4 Q. Mr. Southworth didn't have any alcohol at the  
5 sand pit, correct?

6 A. No.

7 Q. In fact, you guys bring jugs of water instead,  
8 correct?

9 A. Yes.

10 Q. Now, when Mr. Farrah was asking you these  
11 questions without Rare being at the deposition  
12 a year and a half ago, he asked you whether or  
13 not someone paid the bar tab, correct?

14 A. Yes.

15 Q. And you told him back then a year and a half  
16 ago that the bar tab was transferred to the  
17 check, correct?

18 MR. FARRAH: Objection.

19 A. Yes.

20 Q. I'm going to show you testimony on page 35 and  
21 ask you to read that page. Just read it  
22 quickly. Read it to yourself.

23 (Witness reviews document.)

24 Q. Is it your memory that the beers that were

1 correct?

2 A. Yes.

3 MR. FARRAH: What page are we talking  
4 about?

5 MR. GILLIS: Page 28.

6 Q. "What did you see him drink?" "He had a beer,"  
7 correct?

8 A. Yes.

9 MR. FARRAH: Objection.

10 Q. Prior to Mr. Farrah suggesting that he might  
11 have had more at that time, did you ever  
12 testify to anybody that he had more than a beer  
13 at the bar that evening?

14 MR. FARRAH: Objection.

15 A. No.

16 Q. In fact, he didn't even have a full beer at the  
17 bar, did he? He brought it to the table,  
18 correct?

19 MR. FARRAH: Objection.

20 A. Correct.

21 Q. Was the first beer that he got at the bar the  
22 first one he took over to the table?

23 MR. FARRAH: Objection.

24 A. As far as I know.

1 gotten at the bar were added on to the check at  
2 the table?

3 MR. FARRAH: Objection.

4 A. Yes.

5 Q. And that's sworn testimony you gave to  
6 Mr. Farrah a year and a half ago, correct?

7 A. Correct.

8 Q. That was a year and a half before you met  
9 Mr. DiNatale, correct?

10 A. Yes.

11 Q. Do you remember telling Mr. Farrah that  
12 Mr. Southworth ordered a beer with his dinner?

13 MR. FARRAH: Where are we talking about?  
14 I object.

15 A. I don't remember the question.

16 Q. By the way, do you remember telling Mr. Farrah  
17 that you ordered a steak; you were positive  
18 about that?

19 A. No.

20 Q. Let me show you the bottom of page 46 and top  
21 of page 47 at your prior deposition. Look at  
22 that.

23 (Witness reviews document.)

24 MR. FARRAH: What is the question?

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1 Q. Does that refresh your recollection of what you  
2 had to eat that night?  
3 A. Yes.  
4 Q. You said earlier in the deposition that you saw  
5 Mr. Southworth get up and go to the bathroom,  
6 correct?  
7 A. Yes.  
8 Q. Did you observe him walking to and from the  
9 bathroom?  
10 A. Yes.  
11 Q. The bathroom is in the back corner; isn't that  
12 right?  
13 A. Yes.  
14 Q. The hallway leading to the bathroom doesn't  
15 lead to any other part of the restaurant,  
16 correct?  
17 A. Correct.  
18 Q. You can't get to the bar by going to the  
19 bathroom, correct?  
20 A. Yes.  
21 Q. Was he walking fine when you saw him go to the  
22 bathroom?  
23 A. Yes.  
24 Q. Did you see him stagger at all?

1 A. Correct.  
2 Q. Nobody that night at the table said to anyone  
3 else that they thought they were intoxicated,  
4 correct?  
5 MR. FARRAH: Objection.  
6 A. No.  
7 Q. You told that to Mr. Farrah, didn't you, a year  
8 and a half ago?  
9 MR. FARRAH: What page are we talking  
10 about?  
11 MR. GILLIS: 42.  
12 A. No.  
13 Q. That's your memory today, correct?  
14 A. Yes.  
15 Q. Nobody at the table thought that anybody else  
16 was intoxicated, correct?  
17 MR. FARRAH: Objection. That's not what  
18 he testified to. I'm objecting.  
19 A. No.  
20 Q. You told him back then that Jeff was not  
21 particularly loud; isn't that correct?  
22 A. Correct.  
23 Q. Was he any louder than anybody else at the  
24 table?

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1 A. No.  
2 Q. Was he unsteady on his feet?  
3 A. No.  
4 Q. Did he show any signs that were other than his  
5 normal self when he went to the bathroom?  
6 A. No.  
7 Q. You testified to Mr. Farrah back in 2004 that  
8 you left just before or just right around  
9 11:00; is that correct?  
10 MR. FARRAH: Objection.  
11 A. Correct.  
12 Q. Is that your memory as to what time you left,  
13 as you sit here today?  
14 A. Yes.  
15 Q. It was not 10:00, correct?  
16 MR. FARRAH: Objection.  
17 A. No.  
18 Q. Do you know whether or not any of the people at  
19 the table that night ate just an appetizer or  
20 an appetizer and a cup of soup as opposed to an  
21 entree?  
22 A. I don't know for certain.  
23 Q. In fact, you can't quite remember what you had,  
24 correct?

1 A. No.  
2 Q. He was not any louder than you, correct?  
3 A. No.  
4 Q. You were not intoxicated, were you?  
5 A. No.  
6 Q. Seven guys in their early twenties, late teens  
7 having dinner on a Friday night, correct?  
8 A. Correct.  
9 Q. Now, do you remember testifying that you were  
10 at Four Points closer to forty minutes rather  
11 than ten or fifteen minutes?  
12 A. Yes.  
13 Q. Now, you've testified various ways. What is  
14 your memory as you sit here today? Do you  
15 remember whether it was thirty-five minutes or  
16 forty minutes or whatever minutes?  
17 MR. FARRAH: Objection.  
18 A. It was probably around half an hour.  
19 Q. Okay. That's your best estimate as you sit  
20 here today, correct?  
21 A. Correct.  
22 Q. Did you see Jeff Southworth go into the room  
23 that you were standing outside of in the hotel?  
24 A. No.

1 Q. He never went in the room?

2 A. Not that I know of.

3 Q. Did someone bring the beer out to him, or did

4 he go into the room to get it?

5 A. I'm pretty sure somebody brought it out.

6 Q. People in the room were bringing beers out to

7 people in the hallway?

8 MR. FARRAH: Objection.

9 A. I don't know whether the beer was brought from

10 the room the two people I didn't know were

11 staying in or the two bouncers or security that

12 we were talking to.

13 Q. Somebody was supplying beer to you people if

14 you wanted it at the hotel, correct?

15 A. Yes.

16 Q. And you were able to get it for the half hour

17 that you were there at the hotel if you wanted

18 it, correct?

19 A. Yes.

20 Q. And nobody was limiting anybody as to the

21 number of beers they had in the hotel, correct?

22 A. Correct.

23 Q. Nobody said, "Look, we only have enough for

24 everybody to have one," or "You're limited to

1 A. An estimate or a guesstimate.

2 Q. Is it fair to say that you were guessing at

3 that point?

4 MR. FARRAH: Objection.

5 A. I don't think I was guessing. I think I was

6 thinking that there was more a possibility that

7 he had had more.

8 Q. So when you said "maybe four," that's a

9 possibility, not an accurate statement as to

10 what you know him to have drunk at the table

11 that day, correct?

12 MR. FARRAH: Objection.

13 A. Yes.

14 Q. In fact, six weeks after the accident you told

15 the state police that he had maybe two,

16 correct?

17 MR. FARRAH: Objection.

18 A. Correct.

19 Q. Was it your understanding that you were at the

20 Longhorn close to two hours that evening?

21 MR. FARRAH: Objection.

22 A. Yes.

23 Q. Do you remember exactly how long you were at

24 the apartment complex that night before you

1 one beer," correct?

2 A. Yes.

3 Q. Do you know what type of beer it was?

4 A. I don't.

5 Q. Do you know how big the cooler was in the back

6 of Mr. Southworth's car?

7 A. No.

8 Q. Did you see the cooler?

9 A. No.

10 Q. Were you aware that he had a cooler in the back

11 seat?

12 A. No.

13 Q. You don't remember what the bartender looked

14 like, correct?

15 A. Not specifically.

16 Q. She didn't appear to be a friend of Scott's or

17 Jeff's, did she?

18 A. No.

19 Q. I know you were trying to answer the best you

20 could in the first deposition, but when you

21 answered "maybe" to these questions on page 38,

22 was that an accurate statement or was that a

23 guesstimate on your part?

24 MR. FARRAH: Objection.

1 left?

2 A. Not exactly.

3 Q. What is your best estimate?

4 MR. FARRAH: Objection.

5 A. At least twenty-five minutes, at the most

6 thirty-five minutes.

7 Q. How long did it take you to get from the

8 apartment complex to the scene of the accident?

9 A. Like close to ten minutes.

10 Q. The dogs were in the car for the whole time you

11 were in the restaurant?

12 A. Yes.

13 Q. They were sitting there for about two hours,

14 correct?

15 A. Yes.

16 Q. Did he let the dogs out of the car when you

17 went to the truck?

18 MR. FARRAH: Objection.

19 A. I don't remember.

20 Q. Did he rile the dogs up at any point when he

21 came out of the restaurant?

22 MR. FARRAH: Objection.

23 A. No.

24 MR. GILLIS: What is the nature of your

Page 165

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1 objection?

2 MR. FARRAH: "Riled the dogs up," form of  
3 the question.

4 Q. You testified earlier that the one time you  
5 thought he was intoxicated he riled up the dogs  
6 at a party, correct?

7 MR. FARRAH: Objection.

8 A. Yes.

9 Q. He didn't exhibit any of that behavior when you  
10 left the Longhorn on the night of September 26,  
11 2003, did he?

12 A. No.

13 Q. When the police asked you, you didn't tell them  
14 that you thought Mr. Southworth was intoxicated  
15 that evening, did you?

16 A. No.

17 Q. When you were under testimony at the grand  
18 jury, you never said that Mr. Southworth was  
19 intoxicated that evening, did you?

20 A. No.

21 Q. In fact, when you left there that night, you  
22 didn't believe him to be intoxicated, did you?

23 A. No.

24 Q. After you left the Longhorn that evening, you

1 A. I'm pretty sure that he had a beer at the  
2 hotel.

3 Q. At the restaurant did they drink about the same  
4 amount?

5 MR. FARRAH: Objection.

6 A. Correct.

7 Q. Did he show any signs of intoxication?

8 A. No.

9 Q. At any time at the restaurant do you remember  
10 anybody at the table showing any signs of  
11 intoxication?

12 A. No.

13 Q. After you left the restaurant and after there  
14 was drinking at the hotel, did you see a change  
15 in Mr. Southworth's demeanor after that point?

16 A. No.

17 Q. Did he seem intoxicated when he was getting in  
18 his vehicle later on that evening?

19 A. No.

20 Q. Do you have any independent memory, not from  
21 looking at documents today or anything else,  
22 but your memory of the night of the accident?  
23 Do you have a memory of there being any extra  
24 drinks on the table?

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Page 168

1 first went to the hotel for a while, correct?

2 A. Yes.

3 Q. There was drinking in the hallway, correct?

4 A. Yes.

5 Q. Then you went to the strip bar, correct?

6 MR. FARRAH: Objection.

7 A. Yes.

8 Q. You left the strip bar without going into it  
9 and went to the apartment complex, correct?

10 A. Correct.

11 Q. That was about a thirty-minute ride from the  
12 Other Side to the apartment complex, correct?

13 MR. FARRAH: Objection.

14 A. Correct.

15 Q. Could it be a little less than that, do you  
16 know?

17 MR. FARRAH: Objection.

18 A. If you were driving fast.

19 Q. Who was driving from the time you left the  
20 Longhorn until the time that you arrived at the  
21 apartment complex?

22 A. Scott.

23 Q. Did Scott have any more to drink that evening,  
24 that you know of, than Mr. Southworth?

1 MR. FARRAH: Objection.

2 A. You mean just drinks that had been ordered and  
3 not drinking?

4 Q. Yes.

5 A. No.

6 Q. When you say "checked out from the bar," did  
7 you mean by that that you were just leaving the  
8 bar to go to the table?

9 MR. FARRAH: Objection.

10 A. Yes.

11 Q. You didn't mean "cash out," correct?

12 MR. FARRAH: Objection.

13 A. No.

14 Q. If you had paid at the bar, you would have  
15 said, "We paid the tab and went to the table,"  
16 correct?

17 MR. FARRAH: Objection.

18 A. Yes.

19 Q. You answered several times today to questions  
20 that you don't remember.

21 When you answer a question "I don't  
22 remember" does that mean something didn't  
23 happen or you just don't remember whether or  
24 not it happened or didn't happen?



1 MR. FARRAH: Objection.

2 A. I just don't remember whether it happened or

3 didn't happen.

4 Q. When you answered questions previously "I don't

5 remember," that is not to say whatever was

6 being talked about didn't happen. You just

7 don't remember whether it did or didn't,

8 correct?

9 MR. FARRAH: Objection.

10 A. Correct.

11 Q. Is it fair to say when the drinks came to the

12 table, they came one drink per person at a

13 time?

14 MR. FARRAH: Objection.

15 A. I think so but --

16 Q. I want your memory. Tell me your memory.

17 MR. FARRAH: Let him answer. He was

18 trying to.

19 A. I remember the round being ordered, but

20 according to the bill, there were seven drinks

21 brought to the table.

22 Q. That's why I'm asking for your memory. I know

23 what the bill says.

24 Your memory, as you sit here today, do you

1 have a specific memory of seeing anybody with

2 more than one drink per round?

3 A. No.

4 Q. Did you see any of the managers walking around

5 there that night while you were at the

6 Longhorn?

7 A. I don't remember seeing any managers.

8 Q. Meaning you don't remember if they did or

9 didn't walk around?

10 A. Correct.

11 Q. Had you been to the Longhorn prior to this

12 date?

13 A. I had been there once before.

14 Q. How long prior to this accident was that?

15 A. It was probably a while, maybe a year before

16 then.

17 Q. Those are the only two times you have been to

18 the Longhorn?

19 A. Yes.

20 MR. GILLIS: I don't have any further

21 questions.

22

23

24

1 REDIRECT EXAMINATION

2

3 BY MR. FARRAH:

4 Q. Is it accurate to say that as of September 26,

5 2003 Jeff was your friend?

6 A. Yes.

7 Q. And is it accurate to say that throughout this

8 process of speaking to different people about

9 the events of September 26, 2003 you have felt

10 uncomfortable about talking about Jeff, your

11 friend?

12 MR. GILLIS: Objection.

13 A. No.

14 Q. Is it accurate to say that you didn't want to

15 hurt Jeff as part of this process of speaking

16 to people about the events of September 26,

17 2003?

18 MR. GILLIS: Objection.

19 A. Well, not really because to be honest with you,

20 whatever happened that night and what will or

21 has happened, I think regardless of who it is,

22 they deserve whatever happens to them.

23 Q. Do you think Jeff deserves the punishment that

24 he got in the criminal case?

1 A. I don't know exactly what he got.

2 Q. He was found guilty.

3 A. I know he was guilty. I don't know what his

4 sentencing was. I agree that he should serve

5 time.

6 Q. Do you think it was appropriate that Jeff be

7 found guilty of driving under the influence?

8 MR. GILLIS: Objection.

9 A. No. Well, what is driving under the influence?

10 Like having alcohol in your system and driving?

11 Then yes.

12 Q. Because he had alcohol in his system and he was

13 driving that night, wasn't he?

14 A. Yes.

15 Q. Throughout this process, have you tried to help

16 Jeff as best you can?

17 MR. GILLIS: Objection.

18 A. No.

19 MR. FARRAH: Okay. I'm done. Thank you.

20

21 RECROSS-EXAMINATION

22

23 BY MR. GILLIS:

24 Q. Have you spoken with Jeff since the accident?

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1 A. No.  
 2 Q. So whatever friendship you had, you have not  
 3 spoken with him in the last two-and-a-half  
 4 years, correct?  
 5 A. Correct.  
 6 Q. Even if he were a closer friend than he was,  
 7 you would not lie to the grand jury, would you?  
 8 MR. FARRAH: Objection.  
 9 A. No.  
 10 Q. Would you lie at trial to benefit Jeff?  
 11 MR. FARRAH: Objection.  
 12 A. No.  
 13 Q. Would you lie under oath at your deposition?  
 14 A. No.  
 15 Q. Would you lie on your affidavit to benefit  
 16 Jeff?  
 17 A. No.  
 18 Q. By the way, the affidavit, Paragraph 6, that  
 19 Mr. Farrah talked about states that you  
 20 testified at your deposition to certain things,  
 21 correct?  
 22 A. Correct.  
 23 Q. We have gone through a lot of those things to  
 24 specify them, correct?

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1 A. Correct.  
 2 Q. It says here, "Everyone at the table was loud."  
 3 As you've testified, Mr. Southworth was not any  
 4 more particularly loud than anybody else,  
 5 correct?  
 6 A. Correct.  
 7 Q. You can't remember whether it was a waitress or  
 8 a manager who came over to you, correct?  
 9 A. Correct.  
 10 Q. That was twenty to twenty-five minutes before  
 11 you left the restaurant, correct?  
 12 MR. FARRAH: Objection.  
 13 A. Yes.  
 14 Q. Prior to that time nobody that you're aware of  
 15 complained of any of the behavior at the table,  
 16 correct?  
 17 MR. FARRAH: Objection.  
 18 A. Correct.  
 19 Q. Nobody had to come to the table and tell you  
 20 guys to be knock something off or quiet down,  
 21 correct?  
 22 A. Yes.  
 23 Q. When you said in your deposition you testified  
 24 to certain things on 49 to 51. You didn't see

Page 175

1 any change in his demeanor that night while he  
 2 was at the Longhorn that would indicate to you  
 3 that he was under the influence, correct?  
 4 MR. FARRAH: Objection.  
 5 A. No.  
 6 Q. So in fact, in your opinion as you stated today  
 7 under oath, he was not under the influence of  
 8 alcohol that you could tell when he was at the  
 9 Longhorn that evening, correct?  
 10 MR. FARRAH: Objection.  
 11 A. I guess. Referring to the last question, what  
 12 exactly is "under the influence"?  
 13 Q. Let's go back to this. When you signed this  
 14 document that Mr. Farrah prepared for you where  
 15 he wrote on your behalf that Mr. Southworth  
 16 seemed to be under the influence of alcohol,  
 17 what did you think "under the influence of  
 18 alcohol" meant?  
 19 MR. FARRAH: Objection.  
 20 A. I can say that I don't think he was drunk. I  
 21 mean, he was under the influence in respect  
 22 that he had been drinking alcohol.  
 23 Q. So when you agreed to sign for Mr. Farrah this  
 24 statement, your understanding of what

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1 Mr. Farrah wrote for you was being under the  
 2 influence of alcohol was the fact that you had  
 3 alcohol in your system, correct?  
 4 MR. FARRAH: Objection.  
 5 A. Correct.  
 6 Q. It didn't mean that he was drunk, correct?  
 7 MR. FARRAH: Objection.  
 8 A. Yes.  
 9 Q. And, in fact, while at the Longhorn, no slurred  
 10 speech, correct?  
 11 A. Correct.  
 12 Q. He was steady on his feet going to the  
 13 bathroom, correct?  
 14 A. Correct.  
 15 Q. No slurring at the table, correct?  
 16 A. Correct.  
 17 Q. No louder than anyone else at the table,  
 18 correct?  
 19 A. Correct.  
 20 Q. You don't have a specific memory of any glassy  
 21 eyes, correct?  
 22 MR. FARRAH: Objection.  
 23 A. Correct.  
 24 MR. GILLIS: I have no further questions.

1 MR. FARRAH: I think I've asked you  
2 everything I need to ask you. Thanks a lot.  
3 MR. GILLIS: You're done.

4  
5 (Whereupon, the deposition was  
6 concluded at 3:05 p.m.)  
7  
8  
9  
10  
11  
12  
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14  
15  
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24

1 CERTIFICATE  
2 COMMONWEALTH OF MASSACHUSETTS  
3 COUNTY OF MIDDLESEX, SS  
4  
5 I, BARBARA J. SIMON, a Professional  
6 Shorthand Court Reporter and Notary Public in  
7 and for the Commonwealth of Massachusetts, do  
8 hereby certify that the foregoing deposition of  
9 Jude Connelly, was taken before me on Friday,  
10 February 10, 2006. The said witness was  
11 satisfactorily identified and duly sworn before  
12 the commencement of his testimony; that the  
13 said testimony was taken stenographically by  
14 myself and then transcribed by myself. To the  
15 best of my knowledge, the within transcript is  
16 a complete, true and accurate record of said  
17 deposition.

18 I am not connected by blood or marriage  
19 with any of the said parties, nor interested  
20 directly or indirectly in the matter in  
21 controversy.

22 In witness whereof, I have hereunto set my  
23 hand this 20th day of February, 2006.  
24

\_\_\_\_\_  
Barbara J. Simon, Notary Public  
My Commission Expires:  
November 6, 2009

1 SIGNATURE PAGE/ERRATA SHEET

2 RE: Nancy Rosario, Individually, as she is the  
3 Administratrix of the Estate of Awilda  
4 Santiago, Essex Probate Court Docket  
5 #03P-2499AD1, P/P/A Veronica Rosario and  
6 Christina Santiago, and as she is the  
7 Administratrix of the Estate  
8 of Jose Santiago, Berlin (Connecticut)  
9 Probate Court, Case #03-0713 v. Rare  
10 Hospitality International, Inc. d/b/a  
11 Longhorn Steakhouse

12 February 10, 2006  
13 Deposition of Jude Connelly

14 I, JUDE CONNELLY, do hereby certify that I  
15 have read the foregoing transcript of my  
16 testimony and further certify that it is a true  
17 and accurate record of my testimony (with the  
18 exception of the following changes listed  
19 below):

Page	Line	Correction
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

20 Signed under the pains and penalties of  
21 perjury this \_\_\_\_\_ day of  
22 \_\_\_\_\_, 2006.

23 \_\_\_\_\_  
24 Jude Connelly

to LIGH Anna Chabet

12-17-80

SS# 034-68-9887

57 Fourth St

3rd floor

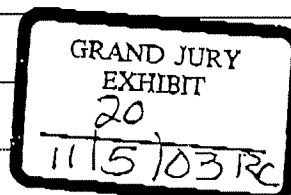
Leominster Ma 01453

(978)-840-2810

There were about 8 men. They all had chowder & bread. Then they had salads, most had steak or ribs. They were drinking Manhattan's or Bud light draft. He had 3 ~~Bud light~~ Manhattan's.

Ligh Chabet  
Nov 2, 03

8:45pm





## THE UNITED STATES DISTRICT COURT

## DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS )  
SHE IS THE ADMINISTRATRIX OF THE )  
ESTATE OF AWILDA SANTIAGO, ESSEX )  
PROBATE COURT DOCKET #03P-2499ADI )  
P/P/A VERONICA ROSARIO AND )  
CHRISTINA SANTIAGO, AND AS SHE IS )  
THE ADMINISTRATRIX OF THE ESTATE ) Civil Action Number:  
OF JOSE SANTIAGO, BERLIN ) 05 CV 1061MLW  
(CONNECTICUT) PROBATE COURT, )  
CASE #03-0713, )  
Plaintiff(s), )  
vs. )  
RARE HOPITALITY INTERNATIONAL, )  
INC., d/b/a LONGHORN STEAKHOUSE, )  
Defendant. )

## VIDEO DEPOSITION OF:

LEIGH CHABOT

\*\*\*\*\*

## SCHEDULED TO BE TAKEN ON:

March 10, 2006

Beginning at 10:00 A.M.

\*\*\*\*\*

Starkings Court Reporting & Video Services  
302 Mason Street, Post Office Box 1345  
Telephone (910) 323-4232 or 1-800-328-3747

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Please Note: Proper nouns MAY BE spelled  
Phonetically. No exhibits were presented to the  
reporter to attached to the transcript.

## A P P E A R A N C E S:

## ON BEHALF OF THE PLAINTIFF(S):

ALBERT FARRAH, JR., ESQUIRE  
One Washington Mall, 5th Floor  
Boston, MA 02108  
alf@afarrah.com

## ON BEHALF OF THE DEFENDANT(S):

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KRISTEN HATHCOAT, ESQUIRE  
BEN WILSON, RISK ADMIN.  
RARE HOSPITALITY  
8215 Roswell Rd., Bldg., 600  
Atlanta, GA 30350

Starkings Court Reporting &amp; Video Services

3

(Whereupon,

LEIGH CHABOT

was called as a witness, duly sworn to tell  
the truth, and testified under oath as follows:)

(10:11 A.M.)

## EXAMINATION BY MR. FARRAH:

Q. Good morning, Ms. Chabot. My name is Albert  
Farrah and I represent the Plaintiff in this action. How  
do you do?

A. Good.

Q. Could you tell us your full name for the  
record, please?

A. Lee Ann Blackington Chabot, maiden name  
Blackington?

Q. How old are you?

A. Twenty-five.

Q. And are you married?

A. Yes.

Q. Where do you live?

A. Fayetteville, North Carolina.

Q. Do you have any children?

A. Yes, three.

Q. Could you briefly tell me what your schooling  
experience is?

A. I attended high school through 11th grade at

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4

- 1 Paradise Village Hills Phoenix, Arizona. Later I  
2 obtained my GED and served -- did one year at Mount  
3 Monchuset (phonetic) Community College which ended in  
4 2004.
- 5 Q. Your age again is?
- 6 A. Twenty-five.
- 7 Q. Date of birth is what?
- 8 A. December 17, 1980.
- 9 Q. Can you tell me what experience you have  
10 working in restaurants?
- 11 A. I began working at J&B's Bar and Grill in  
12 Townsend, Massachusetts in about May of 1998. I  
13 hostess'd there for about six months. After that I  
14 waitressed for the following time I was there, which was  
15 about three years. And then I moved on to Longhorn  
16 sometime late 2000 and worked there until April 12, 2004,  
17 which then I left when I joined the military.
- 18 Q. You joined the military in 2004; is that  
19 right?
- 20 A. Yes, sir.
- 21 Q. Were you in the Reserves prior to that time?
- 22 A. No, sir.
- 23 Q. When you worked at JMB's, is that the name of  
24 it with an M in the middle?
- 25 A. No, an "E" sign, J&B's.

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1 Q. Can you tell me approximately how long before  
2 September 26, 2003 it was?

3 A. Approximately, I would say at least four  
4 months.

5 Q. And can you tell me with what frequency, that  
6 is how many times between that first sighting of him, for  
7 lack of a better way to describe it, four months before  
8 September 26, 2003, and September 26, 2003, you saw him  
9 at the restaurant.

10 A. His frequency I would say approximately would  
11 be once a week.

12 Q. Can you describe him to me as he appeared to  
13 you back then?

14 A. Back then he was, from what I remember, over  
15 six foot, six two, well over 200 pounds. I would say  
16 220.

17 Q. What kind of hair cut did he have during that  
18 period?

19 A. He had a buzz cut.

20 Q. Buzz cut?

21 A. Yeah.

22 Q. Pretty distinctive looking fellow?

23 A. I wouldn't pick him out from a crowd. He had  
24 a thicker build. He wasn't fat. A thicker kind of kid.  
25 But he would not stand out to me in a crowd, no.

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1 A. I spoke to Sherry the following day.

2 Q. Tell me what you said to her and what she  
3 said to you during that conversation?

4 A. It was -- I basically told Sherry that I had  
5 seen him on the news and that he was involved in a fatal  
6 accident. And she said, are you sure it was him? I  
7 said, Yeah, I'm pretty sure, his picture was up there.  
8 And she said, did they say a name. And I said no. And  
9 that was about it. She said no, it couldn't have been  
10 him.

11 Q. Why did she say no it couldn't have been him?

12 A. Probably too much of a coincidence, you don't  
13 think anyone you'd know would be on the news.

14 Q. During that conversation did Sherry say to  
15 you that she had waited on him before?

16 A. Yes. They're her regulars.

17 Q. He was one of her regulars; is that right?

18 A. Yes, sir.

19 Q. What do you mean by a regular?

20 A. Someone who you wait on when they normally  
21 come in. You would know that was your customer and they  
22 may even ask for you instead of even sitting with someone  
23 else.

24 Q. Did customers have that ability to ask for a  
25 particular waitress, I mean, if the restaurant level of

Starkings Court Reporting & Video Services

1 Q. Do you have a memory during that four-month  
2 period before September 26, 2003 of having waited on him  
3 yourself?

4 A. I may have waited on him one time maybe.

5 Q. Do you know any of the other waitresses at  
6 the Longhorn who waited on him during that four month  
7 period before September 26, 2003?

8 A. Yes.

9 Q. Who? Who else waited on him during that  
10 period?

11 A. Mary Clare did and Sherry did.

12 Q. Mary Clare Fitzgerald?

13 A. I believe, yes.

14 Q. And Sherry?

15 A. Samon.

16 Q. How do you know Sherry Samon waited on him  
17 before September 26, 2003?

18 A. Just from memory. I have been friends with  
19 Sherry, and from the restaurant seeing him in there, I  
20 had known Sherry to wait on him. Usually Sherry and I  
21 always work the same shifts.

22 Q. Did you ever, after you realized that there  
23 was this accident of September 27 in the early morning of  
24 2003, did you speak to Sherry about this gentleman, Mr.  
25 Southworth?

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1 business allowed it?

2 A. Absolutely.

3 MR. GILLIS: Objection.

4 Q. What made you understand that Mr. Southworth  
5 was Sherry's customer?

6 A. Normally when he came in from the shifts I  
7 was on, and that I saw him in the restaurant, Sherry was  
8 waiting on him.

9 Q. Did you ever hear him ask for Sherry?

10 A. No, I never heard him ask.

11 Q. Did you ever hear Sherry talk about him  
12 during the period prior to September 26, 2003?

13 A. Yes.

14 Q. What sort of things did she say about him?

15 A. She just, you know, she never mentioned him  
16 by name, but if she came to the computer and we were  
17 sitting there chatting, she would go oh, yeah, those kids  
18 are so funny. Or maybe tell me something they were  
19 talking about at the table. She mentioned frequently how  
20 they'd always come in after dirt biking. And that was  
21 their ritual. They would go out dirt biking for the day  
22 and then come in for dinner.

23 Q. Can you tell me how many times Sherry waited  
24 on Mr. Southworth during that four-month period?

25 MR. GILLIS: Objection.

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(DEPOSITION EXHIBIT #10 WAS MARKED  
FOR IDENTIFICATION.)

Q. Do you recognize Exhibit #10 as depicting a  
portion of the service bar at the Leominster Longhorn as  
it appeared on September 26, 2003?

A. I don't remember the corkboard being there.

Q. Okay. Other than that does it look like a  
portion of the service bar?

A. Yes.

Q. I am going to show you a photograph and ask  
you if it fairly and accurately depicts a portion of the  
Leominster Longhorn as it appeared on September 26, 2003?

A. Yes.

Q. What portion does that show?

A. It shows the back alley where we receive our  
food, the dish pit, and a small portion of the left side  
where we make our drinks and put bread in.

MR. FARRAH: Could we have that marked as  
the next exhibit.

(DEPOSITION EXHIBIT #11 WAS MARKED  
FOR IDENTIFICATION.)

MR. GILLIS: When are we going to get copies  
of these? I believe you said we were going to get the  
video and all the photographs that you took.

MR. FARRAH: Did you get an e-mail -- can we

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go off the record.

(Off the record.)

(Back on the record as follows:)

BY MR. FARRAH:

Q. Could you show us where you get the food?

A. (Indicating while testifying.) Right here we  
get the main entrees. Up here is where we get appetizers  
and we pull our salads from there.

Q. All right. Did you testify before the Grand  
Jury?

A. No, sir.

Q. Did you speak to any other police after that  
meeting with the police at the Longhorn on November 2,  
2003?

A. No, sir.

Q. In Exhibit #7 you wrote among other things --  
well, you wrote there were about eight men. They all had  
chowder and bread. Then they had salads. Most had  
steaks or ribs. They were drinking Manhattans or Bud  
Light draft. They had three Manhattans. Do you see  
that?

A. Yes, sir.

Q. And the he you are referring to there is Mr.  
Southworth; is that right?

A. Yes, sir.

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Q. Did he have any beers that you recall at the  
table?

A. Not that I recall.

Q. Do you know who had the beers at the table?

A. I know that I served a beer to a gentleman  
who was in a black hat with black hair.

Q. And you served another beer to that table  
during that night; isn't that right?

A. Yes, sir.

Q. Who did you serve that too?

A. I don't recall specifically, sir.

Q. So the two beers that appear on the first  
page of Exhibit #8, two 25 ounce Bud Light beers were  
served by you to the table the night of September 26,  
2003; is that right?

A. Yes, sir.

Q. Nobody from the bar, no bartender that night  
asked you to add to your check any beers that had been  
ordered by your table patrons while they had been at the  
bar that night; is that right?

A. Correct.

Q. And the state trooper was the only police  
officer you ever spoke to about this incident?

A. Yes, sir.

Q. Did you ever speak to Chuck Bulgain about

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this incident?

A. Not that I recall, no.

Q. David -- not David Orr -- what's his first  
name?

A. Chris.

Q. Chris Orr and you spoke about it that day, is  
that right?

A. Yes, sir.

Q. Tell me everything you said to Chris and  
Chris said to you that day about Southworth and what  
happened that night?

A. Chris asked me after speaking with the state  
trooper, Chris basically knew exactly what had happened,  
and so I spoke with Chris later that evening. He told me  
what the trooper had told him regarding that there was an  
accident he was involved in. That he had killed two  
people and that they were backtracking his story for the  
night. And from what Chris was told from the trooper,  
the only thing Chris knew is that they had stopped at, I  
guess a strip club after Longhorn. And Chris asked me do  
I feel that they left here they were fine, that they were  
not over served. And I told him I believed they did.  
They left the restaurant fine.

Q. Have you told everything you recall about  
talking to Chris about that night?

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20	DEPOSITION of THOMAS SCOTT ESPY, a witness	20		
21	called by counsel for the Plaintiff, taken	21		
22	pursuant to Rule 30 of the Massachusetts Rules	22	Exhibits retained by Attorney Farrah.	
23	of Civil Procedure before Alene M. Jennette,	23		
24	Certified Shorthand Reporter and Notary Public	24		
	in and for the Commonwealth of Massachusetts,			
	at the offices of Albert L. Farrah, Jr., One			
	Washington Mall, Boston, Massachusetts on			
	Tuesday, June 22, 2004, commencing at			
	10:05 a.m.			
1	<u>APPEARANCES:</u>	2		4
2		1	<u>P R O C E E D I N G S</u>	
3	ALBERT L. FARRAH, JR., ESQ.	2	(Mr. Lane not present.)	
4	One Washington Mall	3	MR. FARRAH: Usual stipulations?	
5	Boston, Massachusetts 02108	4	MR. TURNER: Sure.	
6	On Behalf of the Plaintiff	5	MR. FARRAH: The parties have agreed	
7		6	that all objections, except as to the form of	
8	AVERY DOOLEY POST & AVERY, LLP	7	the question, and motions to strike will be	
9	By Robert P. Turner, Esq.	8	reserved until the time of trial.	
10	90 Concord Avenue	9	THOMAS SCOTT ESPY,	
11	Belmont, Massachusetts 02478	10	a witness called for examination by counsel for	
12	On Behalf of the Defendant	11	the Plaintiff, being first duly sworn, was	
13	Jeffrey Southworth	12	examined and testified as follows:	
14		13	<u>DIRECT EXAMINATION</u>	
15	KOPELMAN AND PAIGE, P.C.	14	BY MR. FARRAH:	
16	By Thomas P. Lane, Esq.	15	Q. Can you tell me your name, please?	
17	31 St. James Avenue	16	A. Thomas Espy. I go by Scott, though.	
18	Boston, Massachusetts 02116	17	Q. Mr. Espy, my name is Albert Farrah,	
19	On Behalf of the Defendant	18	and I represent Nancy Rosario, who has brought	
20	Enterprise Rent-a-Car of Boston	19	a lawsuit against Jeffrey Southworth and	
21		20	Enterprise Motor Car -- or Rent-a-Car for	
22		21	injuries that she suffered and her family	
23		22	suffered as a result of an auto accident that	
24		23	occurred in September of 2003.	
		24	As you can see, there is a court	



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1 Q. I'm sorry. You believe you called  
2 Todd?  
3 A. Yup.  
4 Q. Where were they?  
5 A. Um, I think they were at the Four  
6 Points.  
7 Q. Okay. Where were you when you called  
8 Todd?  
9 A. At the LongHorn.  
10 Q. Sitting at the bar?  
11 A. I believe so.  
12 Q. And how much later was it that they  
13 showed up at the LongHorn?  
14 A. I don't know. I think it was right  
15 as we got our table, so I don't know.  
16 Q. How long did you wait for a table  
17 from when you got there until you were seated?  
18 A. I think half an hour, somewhere  
19 around there. I don't know.  
20 Q. You were at the bar?  
21 A. Yup.  
22 Q. With Jeff and Jude; is that right?  
23 A. Yeah. Well, Jude was waiting for the  
24 table with us.

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1 Q. Jude was at the bar?  
2 A. He wasn't sitting at the bar.  
3 Q. Was he standing at the bar?  
4 A. Yeah.  
5 Q. You were sitting at the bar?  
6 A. I believe so, yes.  
7 Q. With Jeff?  
8 A. Yup.  
9 Q. Can you tell me where at the bar you  
10 were sitting with Jeff and --  
11 A. I don't know.  
12 Q. How much did you have to drink at the  
13 bar?  
14 A. I think just a beer.  
15 Q. Okay. You had just a beer?  
16 A. I believe so, yeah.  
17 Q. What kind of beer?  
18 A. Bud Light probably.  
19 Q. Okay. And how much did Jeff have to  
20 drink at the bar?  
21 A. I don't know. A beer.  
22 Q. More?  
23 A. I don't know.  
24 Q. Why don't you know?

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1 A. Because I don't -- I wasn't keeping  
2 track of how much he was drinking.  
3 Q. So you don't know whether he had one  
4 beer or three beers while he was sitting at the  
5 bar; is that right?  
6 A. Yeah.  
7 Q. Who paid for whatever you drank?  
8 A. I paid for whatever I had.  
9 Q. And Jeff paid for whatever he had; is  
10 that right?  
11 A. Yes.  
12 Q. You weren't really watching Jeff to  
13 see how much he was drinking; is that right?  
14 A. Nope.  
15 Q. What were you doing while you were at  
16 the bar?  
17 A. Probably watching the Red Sox game.  
18 Q. Did Jeff have any Manhattans while he  
19 was at the bar?  
20 A. No.  
21 Q. Are you sure?  
22 A. No, but...  
23 Q. But what?  
24 A. I -- I'm not sure either way.

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1 Q. Okay. The Bud Light that you had was  
2 a draft; is that right?  
3 A. Yup.  
4 Q. 24-ounce?  
5 A. Yup.  
6 Q. Is that right?  
7 A. Yup.  
8 Q. How many did you have?  
9 A. One, I believe.  
10 Q. Maybe two?  
11 A. No, I don't think so.  
12 Q. And the Bud Light that you saw Jeff  
13 order when you came in was a 24-ounce; is that  
14 right?  
15 A. Yes.  
16 Q. Is that typically what the two of you  
17 would have when you went to the LongHorn  
18 Steakhouse, the 24-ounce Bud Light?  
19 A. Sometimes.  
20 Q. Did you ever order a 12-ounce Bud  
21 Light while you were there?  
22 A. I believe so.  
23 Q. Does dirt-biking make you thirsty?  
24 A. Well, it's -- I mean, it's a

<p>1 Volume: 1 2 Pages: 1-44 3 Exhibits: None</p> <p>4 COMMONWEALTH OF MASSACHUSETTS</p> <p>5 Middlesex, ss Superior Court Dept. 6 C.A. No. 03-4704L2</p> <p>7 *****</p> <p>8 NANCY ROSARIO, INDIVIDUALLY and as 9 SHE IS THE ADMINISTRATRIX OF THE 10 ESTATE OF AWILDA SANTIAGO, ESSEX 11 PROBATE COURT DOCKET #03P-2499AD1 12 AND P/P/A VERONICA ROSARIO AND 13 CHRISTINA SANTIAGO, 14 Plaintiff, 15 vs. 16 JEFFREY SOUTHWORTH, ENTERPRISE 17 RENT-A-CAR OF BOSTON, INC., 18 Defendants. 19 *****</p> <p>20 DEPOSITION of MICHAEL J. ESPY, a witness 21 called by counsel for the Plaintiff, taken 22 pursuant to Rule 30 of the Massachusetts Rules 23 of Civil Procedure before Alene M. Jennette, 24 Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Albert L. Farrah, Jr., One Washington Mall, Boston, Massachusetts on Tuesday, June 22, 2004, commencing at 1:09 p.m.</p>	<p>1 <u>I N D E X</u></p> <p>2</p> <p>3 <u>WITNESS: DIRECT CROSS REDIRECT</u></p> <p>4 MICHAEL J. ESPY</p> <p>5</p> <p>6 By Mr. Farrah 4 40 7 By Mr. Lane 37</p> <p>8</p> <p>9</p> <p>10</p> <p>11 <u>E X H I B I T S</u></p> <p>12</p> <p>13 <u>NO. DESCRIPTION PAGE</u></p> <p>14 (None)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p>1 APPEARANCES:</p> <p>2</p> <p>3 ALBERT L. FARRAH, JR., ESQ.</p> <p>4 One Washington Mall</p> <p>5 Boston, Massachusetts 02108</p> <p>6 On Behalf of the Plaintiff</p> <p>7</p> <p>8 AVERY DOOLEY POST &amp; AVERY, LLP</p> <p>9 By Robert P. Turner, Esq.</p> <p>10 90 Concord Avenue</p> <p>11 Belmont, Massachusetts 02478</p> <p>12 On Behalf of the Defendant</p> <p>13 Jeffrey Southworth</p> <p>14</p> <p>15 KOPELMAN AND PAIGE, P.C.</p> <p>16 By Thomas P. Lane, Esq.</p> <p>17 31 St. James Avenue</p> <p>18 Boston, Massachusetts 02116</p> <p>19 On Behalf of the Defendant</p> <p>20 Enterprise Rent-a-Car of Boston</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 P R O C E E D I N G S</p> <p>2 S T I P U L A T I O N S</p> <p>3 It is hereby stipulated and agreed by</p> <p>4 and between counsel for the respective parties</p> <p>5 that all objections, except as to the form of</p> <p>6 the question, and motions to strike will be</p> <p>7 reserved until the time of trial.</p> <p>8 MICHAEL J. ESPY,</p> <p>9 a witness called for examination by counsel for</p> <p>10 the Plaintiff, being first duly sworn, was</p> <p>11 examined and testified as follows:</p> <p>12 DIRECT EXAMINATION</p> <p>13 BY MR. FARRAH:</p> <p>14 Q. Could you state your name for the</p> <p>15 record, please?</p> <p>16 A. Michael Joseph Espy.</p> <p>17 Q. Mr. Espy, my name is Albert Farrah.</p> <p>18 And in a lawsuit brought by Nancy Rosario</p> <p>19 against Jeffrey Southworth, represented by</p> <p>20 Mr. Turner, and Enterprise Rent-a-Car,</p> <p>21 represented by Mr. Lane, I have noticed your</p> <p>22 deposition.</p> <p>23 And I and then these two gentlemen if</p> <p>24 they care to are going to also ask you some</p>

<p style="text-align: right;">25</p> <p>1 they? Manhattans.</p> <p>2 Q. Do you remember how many beers and</p> <p>3 how many Manhattans you had?</p> <p>4 A. I don't know for sure.</p> <p>5 Q. What did Jeff Southworth have to</p> <p>6 drink?</p> <p>7 A. I honestly don't know.</p> <p>8 Q. Whose idea was it to order</p> <p>9 Manhattans?</p> <p>10 A. I don't know. Might have been mine.</p> <p>11 I don't really know.</p> <p>12 Q. Was Todd drinking with Matt and -- I</p> <p>13 forget the other fellow's name.</p> <p>14 A. Bruce.</p> <p>15 Q. -- Bruce at the hotel?</p> <p>16 A. He probably had a beer.</p> <p>17 Q. Where does Todd live?</p> <p>18 A. Harvard, Mass.</p> <p>19 Q. Do you know the street?</p> <p>20 A. 16 Westcott.</p> <p>21 Q. Todd is someone you've known for a</p> <p>22 long time?</p> <p>23 A. Yes.</p> <p>24 Q. Was Jeff Southworth exhibiting signs</p>	<p style="text-align: right;">27</p> <p>1 A. I don't think so.</p> <p>2 Q. Okay. Do you have a memory of having</p> <p>3 told the police that?</p> <p>4 A. No.</p> <p>5 Q. So you really can't remember what</p> <p>6 happened?</p> <p>7 A. No. I was drunk.</p> <p>8 Q. Did you testify before the grand</p> <p>9 jury?</p> <p>10 A. No.</p> <p>11 Q. Have you talked to anybody who was in</p> <p>12 your party the night of September 26, 2003,</p> <p>13 about what happened at the restaurant?</p> <p>14 A. Um, not really specific details or</p> <p>15 anything like that.</p> <p>16 Q. Have you talked to Jude Connelly</p> <p>17 about what happened that night?</p> <p>18 A. No.</p> <p>19 Q. Do you know where you were sitting at</p> <p>20 the LongHorn Steakhouse that night?</p> <p>21 A. No.</p> <p>22 Q. Do you know if --</p> <p>23 A. Actually, I remember my back was to</p> <p>24 the bathroom.</p>
<p style="text-align: right;">26</p> <p>1 of intoxication to you that night at the</p> <p>2 restaurant?</p> <p>3 A. Not that I can recall. I was drunk</p> <p>4 myself, so I don't -- I wasn't really paying</p> <p>5 attention to him.</p> <p>6 Q. Did you drive or did Todd drive?</p> <p>7 A. I didn't drive.</p> <p>8 Q. So it must have been Todd?</p> <p>9 A. Yup.</p> <p>10 Q. Did you speak to the police after the</p> <p>11 accident?</p> <p>12 A. They came to my house, the State</p> <p>13 Police, a younger State Police officer. And I</p> <p>14 gave a statement.</p> <p>15 Q. You gave a statement?</p> <p>16 A. Yup.</p> <p>17 Q. Do you have that statement?</p> <p>18 A. No.</p> <p>19 Q. Do you have it at your house?</p> <p>20 A. No. My parents might. I don't have</p> <p>21 a copy of it.</p> <p>22 Q. Did you tell the police that at the</p> <p>23 restaurant Jeff Southworth personally consumed</p> <p>24 at last three of the Manhattans and two beers?</p>	<p style="text-align: right;">28</p> <p>1 Q. Okay. How many times have you been</p> <p>2 in the LongHorn Steakhouse?</p> <p>3 A. Probably two, at the most three</p> <p>4 times.</p> <p>5 Q. I'm going to show you what's been</p> <p>6 marked as Exhibit 1 in your brother's</p> <p>7 deposition. I'm going to ask you whether --</p> <p>8 and this is a document I got from the</p> <p>9 Leominster Licensing Board.</p> <p>10 A. Mm-hmm.</p> <p>11 Q. I'm going to ask you whether or not</p> <p>12 this document fairly and accurately depicts the</p> <p>13 layout of at least some of the features of the</p> <p>14 LongHorn Steakhouse as it appeared to you that</p> <p>15 night.</p> <p>16 A. This would be the bar, right?</p> <p>17 Q. That's the bar.</p> <p>18 A. Then this would be the entrance.</p> <p>19 Q. That's the entrance, so --</p> <p>20 A. So, yes.</p> <p>21 Q. Your memory is that your back was to</p> <p>22 the rest room?</p> <p>23 A. Yes.</p> <p>24 Q. Were you sitting in a booth or table?</p>

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Volume: II  
Pages: 1-119  
Exhibits: None

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\*\*\*\*\*  
NANCY ROSARIO, INDIVIDUALLY, AS SHE IS \*  
THE ADMINISTRATRIX OF THE ESTATE OF \*  
AWILDA SANTIAGO, ESSEX PROBATE COURT \*  
#03P-2499AD1, P/P/A VERONICA ROSARIO \*  
AND CHRISTINA SANTIAGO, AND AS SHE IS \*  
THE ADMINISTRATRIX OF THE ESTATE OF \*  
JOSE SANTIAGO, BERLIN (CONNECTICUT) \*  
PROBATE COURT, CASE #03-0713 \*  
Plaintiff, \*  
VS \*  
RARE HOSPITALITY INTERNATIONAL, INC. \*  
d/b/a LONGHORN STEAKHOUSE, \*  
Defendant \*  
\*\*\*\*\*

DEPOSITION OF KRISTIN O'DONNELL, a witness

called on behalf of the Plaintiff, taken pursuant to

Notice under the applicable provisions of the Federal

Rules of Civil Procedure, before Barbara J. Simon, a

Professional Shorthand Reporter and Notary Public, in

and for the Commonwealth of Massachusetts, at the law

offices of Albert L. Farrah, Jr., One Washington

Mall, Boston, Massachusetts, on Wednesday, December

28, 2005, commencing at 11:05 a.m.

SHEA COURT REPORTING SERVICES  
(617) 227-3097

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WITNESS DIRECT CROSS REDIRECT RECROSS

KRISTIN O'DONNELL

(By Mr. Farrah) 4

EXHIBITS

There are no exhibits.

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APPEARANCES

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Gillis & Bikofsky, P.C.  
1150 Walnut Street  
Newton, MA 02461  
(617) 244-4300  
Counsel for the Defendant

Page 4

PROCEEDINGS

KRISTIN O'DONNELL, having been previously

satisfactorily identified and duly sworn, on oath,

deposes and says as follows:

DIRECT EXAMINATION

BY MR. FARRAH:

Q. You're still under oath. If I cover old ground, it's

not because I mean to. I'm going to try to move

forward.

Let me start by asking you, on the evening of

September 26, 2003, do you recall having a

conversation with Leigh Chabot about the Jack Daniels

Manhattans that she had ordered from you?

A. Yes.

Q. And did you ask Leigh about that table?

A. Yes.

Q. What did you ask her about the table?

A. I just wanted to make sure that they were eating

dinners.

Q. Did you say to her, in effect, "Are these people

eating food?"

A. Yes.



1 (Court reporter reads back question.)  
 2 MR. GILLIS: I object.  
 3 A. No.  
 4 Q. The Jack Daniels Manhattans that you made for Leigh  
 5 Chabot that night, were they straight up, or on the  
 6 rocks, or don't you know?  
 7 A. Straight up.  
 8 Q. And you have a memory of that; is that right?  
 9 A. Yes.  
 10 Q. And you free-poured those; isn't that right?  
 11 A. Correct.  
 12 Q. Did you follow Longhorn's procedure with respect to,  
 13 first, the vessel into which the drinks were served  
 14 to the patrons?  
 15 A. What do you mean by "vessel"?  
 16 Q. I had to say "vessel." I just felt like saying  
 17 "vessel."  
 18 A. Is that the word we were not sure of last time?  
 19 Q. I'm showing you Exhibit 4 from the first day of your  
 20 deposition, which, for the record, is the Bar  
 21 Operations Manual. Do you remember that document?  
 22 A. Yes.  
 23 Q. And on the page which we have Bates stamped Rare  
 24 05271, bar glassware is described. Do you see that?

1 A. Yes.  
 2 Q. What I want to know is, did you give to Leigh Chabot  
 3 the Jack Daniels Manhattans straight up in a  
 4 six-ounce cocktail glass, as is shown on this page of  
 5 Exhibit 4?  
 6 MR. GILLIS: Objection.  
 7 A. Yes.  
 8 Q. Is there any question in your mind about that?  
 9 A. No.  
 10 Q. Okay. You didn't serve those Jack Daniels Manhattans  
 11 in the fourteen-ounce cobalt-blue-rimmed martini  
 12 glass, did you?  
 13 A. No. That was only for Margaritas.  
 14 Q. Do you have any explanation as to why in the Longhorn  
 15 bar manual it is referred to as a martini glass?  
 16 A. I believe because of the shape and the design.  
 17 Q. That's your guess?  
 18 A. No. That would be exact. It says here as well --  
 19 specialty shaker Margaritas. We would never serve a  
 20 martini in those.  
 21 Q. How far from the lip of the glass -- the Manhattan  
 22 glass -- was it that you poured the drinks, the  
 23 Manhattans?  
 24 A. An inch below, and once the cherry goes in, it brings

1 it up so the customers think they're getting more.  
 2 Q. Can we agree that the drink-making techniques portion  
 3 of Exhibit 4 to your deposition on page 298 requires  
 4 that all drinks be one-quarter inch from the lip of  
 5 the glass?  
 6 A. Yes.  
 7 Q. Is that what you did?  
 8 A. Once the cherry goes in it, it brings it up to about  
 9 a quarter inch.  
 10 Q. And you put one cherry in each glass of the Jack  
 11 Daniels Manhattans; is that right?  
 12 A. Yes.  
 13 Q. Describe for me how you filled the first order for  
 14 Jack Daniels Manhattans that Leigh presented you  
 15 with, which according to Exhibit 11 was for three  
 16 Jack Daniels Manhattans, placed at 8:40.  
 17 MR. GILLIS: Objection. Did you say that she  
 18 served?  
 19 MR. FARRAH: No; that Leigh served.  
 20 MR. GILLIS: I don't think there's any evidence  
 21 that the first round was the round that she served.  
 22 I don't think there's any evidence that she said  
 23 she served that first round.  
 24 Q. Let me back up. According to Exhibit 11, Leigh

1 placed an order for Table 52 for three Jack Daniels  
 2 Manhattans at 8:40 p.m. Do you see that?  
 3 A. Yes.  
 4 Q. Do you agree with that, that that's what Exhibit 11  
 5 shows?  
 6 A. Yes.  
 7 Q. Did you make that round of drinks?  
 8 A. I don't recall.  
 9 Q. Do you have any reason to believe you did not make  
 10 that round of drinks?  
 11 MR. GILLIS: Objection; asked and answered.  
 12 A. I can't say for sure.  
 13 Q. Do you know whether you made the round of drinks for  
 14 seven Jack Daniels Manhattans which Leigh placed for  
 15 Table 52 at 8:51 p.m.?  
 16 A. Yes.  
 17 Q. What is it about that order that leads you to know  
 18 that you made that order?  
 19 A. I just remember the drinks on the tray.  
 20 Q. You remember seven drinks?  
 21 A. Yes.  
 22 Q. Had you ever made seven Jack Daniels Manhattans at  
 23 one time for one table while you worked at the  
 24 Longhorn, up to that point?

1 A.No.  
 2 Q.Had you ever made Jack Daniels Manhattans straight up  
 3 for any customer up to that point while you worked at  
 4 the Longhorn?  
 5 A. Yes.  
 6 Q. Was it a drink you made often?  
 7 A.No.  
 8 Q. And when you worked at J.R.'s, is it accurate to say  
 9 that most of your customers were drinking beers?  
 10 A. Yes.  
 11 Q. On the night of September 26, 2003, was there any  
 12 Longhorn mandated procedure in place for keeping a  
 13 tally of the number of drinks that had been served by  
 14 the service bar to a particular table?  
 15 A.No.  
 16 Q. Was there any Longhorn mandated procedure in place,  
 17 as of September 26, 2003, that required communication  
 18 between the different bartenders as to how much each  
 19 bartender had made for service to a particular table?  
 20 MR. GILLIS: At the service bar?  
 21 MR. FARRAH: At the service bar, yes.  
 22 A.No, there was no set procedure.  
 23 Q. You're clear, if I understand your testimony right,  
 24 and I don't want to put words in your mouth, you're

1 clear that you made the seven straight-up Jack  
 2 Daniels Manhattans that were made at 8:51; is that  
 3 right?  
 4 A. Yes.  
 5 Q. You're unsure about whether it was you that made the  
 6 four Jack Daniels Manhattans that were ordered at  
 7 8:40; is that right?  
 8 A. Yes.  
 9 Q. In either event, was there any means -- any way --  
 10 for you to learn as of the time you made those seven  
 11 Jack Daniels Manhattans that four Jack Daniels  
 12 Manhattans had been ordered eleven minutes earlier?  
 13 A. Are you asking if I knew, if I had a means of knowing  
 14 that?  
 15 Q. Yes, if you had a means of knowing that.  
 16 A.No.  
 17 Q. Was there a computer in the service bar area that  
 18 provided you with that information?  
 19 A.No.  
 20 Q. Was there a policy in place at the Longhorn that  
 21 required service bartenders -- the various service  
 22 bartenders working on any particular night -- to  
 23 share with one another information about the drinks  
 24 that they had prepared for service to any table?

1 MR. GILLIS: Objection.  
 2 A. I don't recall.  
 3 Q. Have you ever made Jack Daniels Manhattans a  
 4 different way from the way you just described the way  
 5 you made those seven during that order?  
 6 A. Yes, at different places I've worked.  
 7 Q. Before or after the Longhorn?  
 8 A. Both.  
 9 Q. While you were at the Longhorn, did you ever make a  
 10 Jack Daniels Manhattan a different way from the way  
 11 that you described you made the seven that night?  
 12 A.No.  
 13 Q. And it's your understanding that the way you made the  
 14 seven that night is the way that the Longhorn manual  
 15 requires it be made?  
 16 A. As far as I recall, yes.  
 17 Q. After that night while you were at the Longhorn, did  
 18 you ever again make Jack Daniels Manhattans for  
 19 anyone?  
 20 A. I would believe so.  
 21 Q. Do you have a memory?  
 22 A. I can't say specifically, no.  
 23 Q. Did you in making the Jack Daniels Manhattans that  
 24 night, did you use what's called Manhattan mix?

1 A.No.  
 2 Q.Can we agree that Exhibit 11 shows a charge for  
 3 Manhattan mix of fifty cents per Jack Daniels  
 4 Manhattan?  
 5 A.Yes. It's sweet Vermouth.  
 6 Q.Did you, in making the Jack Daniels Manhattans, use  
 7 sweet Vermouth?  
 8 A.Yes.  
 9 Q.How much did you put in each Jack Daniels Manhattan  
 10 during that first round of seven?  
 11 A.A quarter ounce, probably.  
 12 Q.How much Jack Daniels did you put in each drink that  
 13 you've described for that first round of seven?  
 14 A.It's a long time. Where I work now, they have bigger  
 15 martinis. I believe it was two ounces, an ounce and  
 16 a half.  
 17 MR. GILLIS: Don't guess.  
 18 A.I can't remember.  
 19 Q.Do you remember testifying in the criminal trial of  
 20 Mr. Southworth?  
 21 A.Yes.  
 22 Q.Do you remember testifying in the criminal trial of  
 23 Mr. Southworth that you put one ounce of Jack Daniels  
 24 in each of those Manhattans?

1 A.I guess so.  
 2 MR. GILLIS: I don't want you to guess.  
 3 A.I don't recall.  
 4 MR. GILLIS: If you don't have an answer, don't  
 5 guess.  
 6 A.I don't recall.  
 7 Q.As you sit here today, all you know about how much  
 8 Jack Daniels you put in that round of seven was that  
 9 you filled the rocks glass with ice and then Jack  
 10 Daniels; is that right?  
 11 MR. GILLIS: Objection.  
 12 A.No.  
 13 Q.How much Jack Daniels did you put in each drink  
 14 during that round of seven that you remember making?  
 15 A.I don't recall what the Longhorn recipe was.  
 16 Q.So you don't have any memory, as you sit here, of how  
 17 much you put in; is that right?  
 18 MR. GILLIS: Objection.  
 19 Q.Of how much Jack Daniels you put in any drink; is  
 20 that right?  
 21 MR. GILLIS: Objection.  
 22 A.It's whatever is in the manual.  
 23 Q.By the way, how was the request made to you that the  
 24 drinks be straight up as opposed to on the rocks?

1 How was that communicated to you?  
 2 A.By the way they were rung in. It would say "rocks"  
 3 on the ticket if they wanted on the rocks.  
 4 Q.And when the request was communicated to you for the  
 5 Jack Daniels Manhattans, did it come to you as it  
 6 appears on this page of Exhibit 11, that is, Jack  
 7 Daniels and a Manhattan mix, or was it a Jack Daniels  
 8 Manhattan that was requested?  
 9 A.Jack Daniels Manhattan mix.  
 10 Q.As it appears in Exhibit 11; is that right?  
 11 A.Yes, without the prices.  
 12 Q.Do you know what a mixing glass is?  
 13 A.A glass you mix drinks in.  
 14 Q.Do you know what a mixing glass is as it's referred  
 15 to in the Bar Operations Manual of the Longhorn  
 16 Steakhouse, as it was in effect on September 26,  
 17 2003?  
 18 MR. GILLIS: Is that a particular page you're  
 19 referring to?  
 20 MR. FARRAH: Yes. It's Bates stamped 299.  
 21 Q.Take a moment and read that first part.  
 22 (Witness reviews document.)  
 23 Q.Do you see that procedure under "Stir and Strain" on  
 24 page 299 of Exhibit 4?

1 A.Yes.  
 2 Q.Is that the procedure you followed in making the  
 3 Manhattans that evening?  
 4 A.Yes, minus the stirring.  
 5 Q.Did you fill a mixing glass two-thirds with ice?  
 6 A.I filled a rocks glass with ice.  
 7 Q.That was your mixing glass; is that right?  
 8 A.Yes.  
 9 Q.And did you fill it two-thirds with ice?  
 10 A.No. I usually filled them with ice to the top.  
 11 Q.And do you have a memory of after pouring the drinks  
 12 from the glass in which you mixed them into the  
 13 individual glasses in which they were to be served  
 14 during that round of seven that we've been talking  
 15 about, whether or not -- and after putting the  
 16 cherries into each of the glasses -- whether or not  
 17 you added more bourbon to bring the level of the  
 18 liquid in any of the seven glasses to within  
 19 one-quarter inch of the lip?  
 20 A.No.  
 21 Q.Do you have a memory of having done that?  
 22 A.No.  
 23 Q.But it's your memory that they went out to the table  
 24 with the liquid one-quarter inch from the lip; is

Page 41

Page 43

1 that right?

2 MR. GILLIS: Objection. It's your memory, not

3 what your practice was.

4 A. No, I don't recall the exact measurement.

5 Q. We can agree, can't we, that the Longhorn Bar

6 Operations Manual called for the drinks going out,

7 that the liquid should be one-quarter of an inch

8 below the lip; is that right?

9 A. Yes.

10 Q. And that typically is what you tried to do; isn't

11 that right?

12 A. Yes, or it would be lower than that but never above.

13 Q. But you want to serve a good drink to the patron,

14 don't you?

15 MR. GILLIS: Objection.

16 A. Yes.

17 Q. The patron doesn't want to see the drink below the

18 level that other people are getting the drinks, does

19 he or she?

20 A. No.

21 Q. Now, at any time since you learned through the

22 conversation with Patty about that group of guys,

23 what happened the night of September 26, 2003, the

24 morning of September 27, 2003, have you tried to

1 conversation with Patty?

2 Q. Patty; I'm sorry. Had anybody spoken to you about

3 Southworth's criminal trial?

4 A. No.

5 Q. Did you know that he was charged with different

6 crimes?

7 A. No.

8 Q. What did Patty say to you about that group of guys,

9 best as you can recall it, when she had that

10 conversation with you?

11 A. That she had heard that there was some sort of

12 accident.

13 Q. Did she say anything else?

14 A. No.

15 Q. Did you think, at that point in time, that perhaps

16 one or more of the patrons at Table 52 was under the

17 influence of alcohol at the time that patron was

18 served his last drink?

19 MR. GILLIS: Objection.

20 A. No.

21 Q. At any time since Patty spoke to you about that group

22 of guys, have you considered whether or not any of

23 those guys became intoxicated while a customer at the

24 Longhorn?

Page 42

Page 44

1 calculate in your mind the effects of the alcohol

2 that was served to that table on the different

3 patrons at that table?

4 A. No.

5 Q. Have you asked anyone to do that for you, other than

6 as part of the defense of this lawsuit?

7 A. No.

8 Q. Now, you were visited by a state trooper the night

9 before you testified -- I think it was last

10 September -- in the Southworth criminal trial; is

11 that right?

12 A. Yes.

13 Q. Had someone told you the state trooper was coming to

14 see you?

15 A. No.

16 Q. At what time of the day or night did the state

17 trooper arrive?

18 A. Night.

19 Q. Do you know what time?

20 A. It was very dark in September, so after 8:00.

21 Q. From the time you had the conversation with Sherri

22 until the state trooper arrived, had anybody spoken

23 to you about Southworth's criminal trial?

24 MR. GILLIS: Objection. Do you mean the

1 A. No.

2 Q. Do you know, as you sit here now, without

3 conversations with your counsel or people working for

4 your counsel, whether or not any of that group of

5 guys that Patty spoke to you about became intoxicated

6 while a customer at the Longhorn?

7 A. No.

8 Q. Do you believe that any of that group of guys became

9 intoxicated while a customer at the Longhorn?

10 A. No.

11 Q. Is it that you believe that they did not become

12 intoxicated while a customer at the Longhorn?

13 A. Yes.

14 Q. What is the basis for that belief?

15 A. I didn't see any visibly intoxicated customers

16 leaving that night, and they definitely would have

17 stuck out.

18 Longhorn is a family restaurant. It was not a

19 type of place where people were getting fall-down

20 drunk.

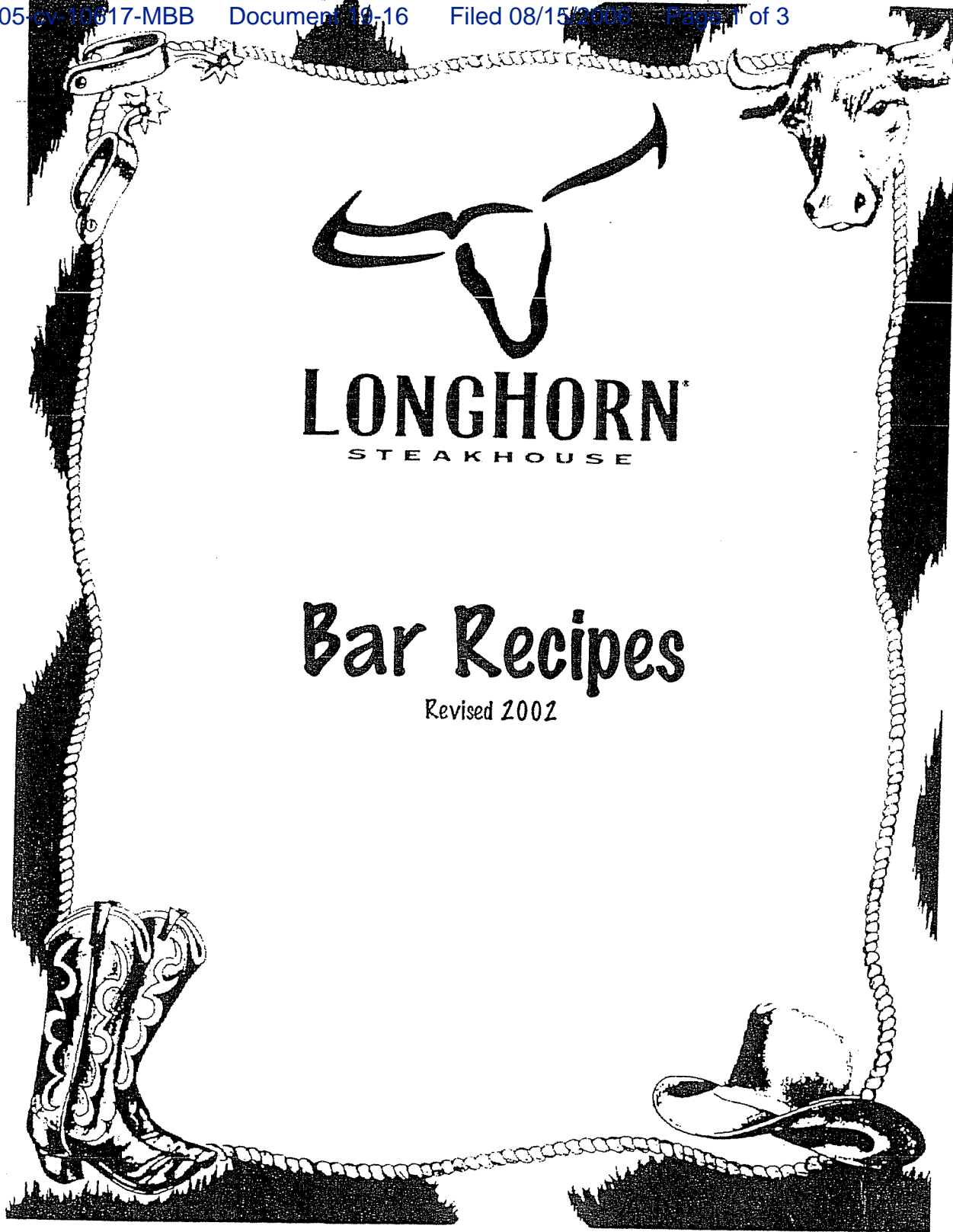
21 So I would definitely remember that, as well as

22 other servers would probably have been talking about

23 it.

24 Q. Is that what you were trained to look for in





**EXHIBIT**  
PK 519106  
No 1 83

**EXHIBIT**  
42  
BSJ 12/08/05 O'Donnell  
PENGAO 800-631-6989

LONGHORN STEAKHOUSE BAR OPERATIONS MANUAL-MASTER 5/02**BAR GLASSWARE**GLASSWARE

Libbey #15245  
3 dozen per case  
7 oz. Rocks



Libbey #15243  
3 dozen per case  
12 oz. Rocks



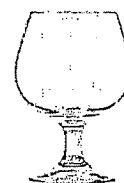
Libbey #8455  
3 dozen per case  
6 oz. Cocktail Glass



Libbey #3965  
3 dozen per case  
8.5 oz. Wine Glass



Libbey #3705  
2 dozen per case  
12 oz. Snifter Glass

USAGE

Liquor drinks w/no mixer  
Drinks Served on the Rocks  
Drinks Served with a Splash  
Shooters with cream or Juice mixers








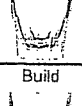
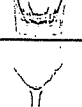
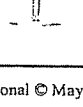
Juice Drinks  
Collins  
Sours  
2 Liquor cream drinks  
Drinks w/ soda gun mixer

All chilled up cocktails  
Martini, Manhattan, Gimlet & Gibson  
Martinis Up  
Sours Up  
Margaritas Up

Wine/Champagne by the Glass

Aromatic Liqueurs  
Brandies  
Cognac

## LONGHORN STEAKHOUSE BAR OPERATIONS MANUAL-MASTER 5/02

NAME	METHOD	INGREDIENTS	GARNISH	CAT.
LONG BEACH ICED TEA 14 oz. Tall Rocks	Mix 	2oz. Desert Island Tea Mix 4oz. Sweet/Sour Fill to 1/4" from top with 1 oz. Cranberry Juice.	Lemon squeeze	Liquor Special
LONG ISLAND ICED TEA 14 oz. Tall Rocks	Mix 	2 oz. Desert Island Tea Mix 4 oz. Sweet/Sour Fill to 1/4" from top with 1 oz. Coke	Lemon squeeze	Liquor Special
JACKALOPE TEA 14 oz. Tall Rocks	Mix 	1oz. Jack Daniels 1oz. Desert Island Tea Mix 4 1/4 oz. Longhorn Sweet n Sour Fill w/Coke	Lemon Wedge	\$5.25
RAZZMATAZZ TEA 14 oz. Tall Rocks	Mix 	1oz. Dekuyper Razzmatazz 1oz. Desert Island Tea Mix 4 1/4 oz. Longhorn Sweet n Sour Fill w/Sprite	Lemon Wedge	\$5.25
LIMON-ADE TEA 14 oz. Tall Rocks	Mix 	1oz. Bacardi Limon Rum 1oz. Desert Island Tea Mix 4 1/4 oz. Longhorn Sweet n Sour Fill w/Coke	Lemon Wedge	\$5.25
MAI-TAI 12 oz. Mug	Mix 	1 1/4 oz. House Rum 3/4 oz. Triple Sec 2 oz. Sweet/Sour 1/2 oz. Grenadine 1 oz. Orange Juice 1 oz. Pineapple Juice Float 151	Orange, Cherry Flag	Liquor Special
MANHATTAN 7 oz. Rocks	Build 	2 oz. House Bourbon 1/4 oz. Sweet Vermouth	Cherry	Call
MANHATTAN-DRY 7 oz. Rocks	Build 	2 oz. House Bourbon 1/4 oz. Dry Vermouth	Lemon twist	Call
MANHATTAN PERFECT 7 oz. Rocks	Build 	2 oz. House Bourbon Equal parts Sweet and Dry Vermouth	Lemon twist	Call
MANHATTAN UP 6 oz. Cocktail With ice, build in mixing glass, stir until glass is foggy. Strain into chilled cocktail glass.	Build 	2 oz. House Bourbon 1/4 oz. Sweet Vermouth	Cherry sword	Call

RARE Hospitality International © May 2002

BAR INFORMATION page 9

Leominster  
227 North Main Street

Server: LEIGH 09/26/2003  
Table 52/1 9:57 PM  
Guests: 6

#20043

Reprint #: 5

Texas Tonion	5.99
Chowder-Cup (2 @2.49)	4.98
Chicken Fingers	4.99
Jack Daniels (17 @4.75)	80.75
Manhattan Mixer (17 @0.50)	8.50
25oz Bud Light (2 @3.99)	7.98
3oz The Renegade	10.99
Baby Back Ribs 1/2 Rack (3 @12.99)	38.97
12oz Prime Rib	14.99
Baby Back Ribs & Chicken	14.99

Complete Subtotal 193.13

Sub Total 193.13

Tax 9.66

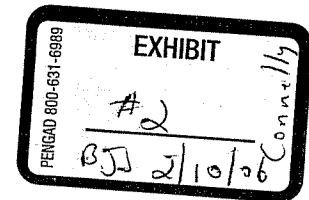
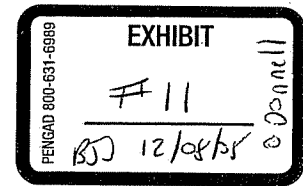
Total 202.79

Cash 240.00

Make plans to dine with us at  
Longhorn Steakhouse.

We will make your dining  
experience special.

--- Check Closed ---





145 - Longhorn of Leominster  
227 North Main Street

# Audit Report

Date of Business: 09/26/2003

Page 7  
12/01/2003 -- 5:29 PM  
5.2.5 180

Time	Type	Transaction
		0.00 Rice
		12.99 1/2 Rack
		0.00 FF
		0.00 Slaw
07:59 PM	LOG OUT	Log Out Emp: 9882 LEIGH
07:59 PM	LOG IN	Log In Emp: 9882 LEIGH
07:59 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:10 PM	LOG IN	Log In Emp: 9882 LEIGH
08:10 PM	CLEARED ITEMS	Mgr 9882 LEIGH Emp 9882 LEIGH cleared \$ 1.89 from Table 63 Chk:40054 1.89 IBC [ 0.000000 Kg] 0.00 MUG [ 0.000000 Kg]
08:10 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 1.89 for Table 63 Chk:40054 1.89 IBC 0.00 No Mug
08:10 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:10 PM	LOG IN	Log In Emp: 9882 LEIGH
08:10 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:30066 Printed 1 time(s)
08:10 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:15 PM	LOG IN	Log In Emp: 9882 LEIGH
08:15 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:16 PM	LOG IN	Log In Emp: 9882 LEIGH
08:16 PM	APPLY PAYMENT	Mastercard on Table 52 Chk:30066 by 9882 LEIGH 57.22 Tip:0.00 ID:5511910207971723 Exp:0606
08:17 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:30066 Printed 2 time(s)
08:17 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 52 Chk:30066 for a total of 57.22
08:17 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:21 PM	LOG IN	Log In Emp: 9882 LEIGH
08:21 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 62 Chk:50036 Printed 1 time(s)
08:21 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:27 PM	LOG IN	Log In Emp: 9882 LEIGH
08:27 PM	ADJUST PAYMENT	Mastercard on Table 52 Chk:30066 by 9882 LEIGH Amt:57.22 Tip:0.00 -> 12.00 ID:5511910207971723 Exp:0606
08:28 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:31 PM	LOG IN	Log In Emp: 9882 LEIGH
08:32 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:40054 Printed 1 time(s)
08:32 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.99 for Table 53 Chk:40051 3.99 Pie
08:32 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:37 PM	LOG IN	Log In Emp: 9882 LEIGH
08:37 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:40051 Printed 1 time(s)
08:37 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:40 PM	LOG IN	Log In Emp: 9882 LEIGH
08:40 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 35.70 for Table 52 Chk:20043 5.99 Tonion 2.49 Chowder Cup 2.49 Chowder Cup 4.99 Fingers 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix

145 - Longhorn of Leominster  
227 North Main Street

# Audit Report

Date of Business: 09/26/2003

Page 8  
12/01/2003 - 5:29 PM  
5.25.180

Time	Type	Transaction
		3.99 25oz Bud Light
08:40 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:43 PM	LOG IN	Log In Emp: 9882 LEIGH
08:43 PM	APPLY PAYMENT	Cash on Table 63 Chk:40054 by 9882 LEIGH 50.00
08:43 PM	APPLY PAYMENT	Cash on Table 63 Chk:40054 by 9882 LEIGH 5.00
08:43 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:40054 Printed 2 time(s)
08:43 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 63 Chk:40054 for a total of 50.41
08:43 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 9.74 for Table 63 Chk:30084 4.99 25oz Wach 4.75 Sombrero
08:43 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 34.47 for Table 63 Chk:30084 16.99 14oz Strip CC 0.00 MR 0.00 FF 0.00 Caesar Salad 2.49 Side Mush 14.99 PR 12oz 0.00 MR PR 0.00 FF 0.00 Caesar Salad
08:43 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:44 PM	LOG IN	Log In Emp: 9882 LEIGH
08:44 PM	APPLY PAYMENT	Cash on Table 53 Chk:40051 by 9882 LEIGH 50.00
08:44 PM	APPLY PAYMENT	Cash on Table 53 Chk:40051 by 9882 LEIGH 20.00
08:44 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:40051 Printed 2 time(s)
08:44 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 53 Chk:40051 for a total of 56.28
08:44 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:51 PM	LOG IN	Log In Emp: 9882 LEIGH
08:51 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 36.75 for Table 52 Chk:20043 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix
08:51 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:55 PM	LOG IN	Log In Emp: 9882 LEIGH
08:55 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 10.37 for Table 53 Chk:20047 6.59 Fire Wrap 1.89 Sprite 1.89 Sprite
08:55 PM	LOG OUT	Log Out Emp: 9882 LEIGH
08:59 PM	LOG IN	Log In Emp: 9882 LEIGH
09:00 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 79.94 for Table 52 Chk:20043

145 - Longhorn of Leominster  
227 North Main Street

# Audit Report

Date of Business: 09/26/2003

Page 9  
12/01/2003 -- 5:29 PM  
5.2.5.180

Time	Type	Transaction
		10.99 Sm-Top 8oz
		0.00 M
		0.00 BP
		0.00 E
		0.00 Caesar Salad
		12.99 1/2 Rack
		0.00 FF
		0.00 Slaw
		14.99 PR 12oz
		0.00 M PR
		0.00 BP
		0.00 E
		0.00 Mix Green Sal
		0.00 Ranch
		14.99 1/2 Rack/ Chix
		0.00 FF
		0.00 Slaw
		0.00 Mix Green Sal
		0.00 Balsamic
		12.99 1/2 Rack
		0.00 FF
		0.00 FF
		12.99 1/2 Rack
		0.00 FF
		0.00 FF
09:00 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:08 PM	LOG IN	Log In Emp: 9882 LEIGH
09:09 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 29.98 for Table 53 Chk:20047
		10.99 Sm-Top 8oz
		0.00 Well Done
		0.00 BP
		0.00 S
		0.00 Mix Green Sal
		0.00 House
		18.99 Lky/ Sam CC
		0.00 Well Done
		0.00 Seasonal Veg
		0.00 Rice
		0.00 Mix Green Sal
		0.00 Italian
09:09 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:15 PM	LOG IN	Log In Emp: 9882 LEIGH
09:15 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.99 for Table 52 Chk:20043
		3.99 25oz Bud Light
09:15 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:16 PM	LOG IN	Log In Emp: 9882 LEIGH
09:16 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:17 PM	LOG IN	Log In Emp: 9882 LEIGH
09:17 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 1 time(s)
09:17 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:21 PM	LOG IN	Log In Emp: 9882 LEIGH
09:21 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 21.00 for Table 52 Chk:20043
		4.75 Jack Daniels
		0.50 Manhattan Mix
		4.75 Jack Daniels
		0.50 Manhattan Mix
		4.75 Jack Daniels
		0.50 Manhattan Mix

145 - Longhorn of Leominster  
227 North Main Street

# Audit Report

Date of Business: 09/26/2003

Page 10  
12/01/2003 -- 5:29 PM  
5.2.5.180

Time	Type	Transaction
		4.75 Jack Daniels 0.50 Manhattan Mix
09:21 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:24 PM	LOG IN	Log In Emp: 9882 LEIGH
09:24 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 15.75 for Table 52 Chk:20043 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix 4.75 Jack Daniels 0.50 Manhattan Mix
09:24 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:31 PM	LOG IN	Log In Emp: 9882 LEIGH
09:31 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:30084 Printed 1 time(s)
09:31 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:33 PM	LOG IN	Log In Emp: 9882 LEIGH
09:34 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 2 time(s)
09:34 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 3 time(s)
09:34 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:35 PM	LOG IN	Log In Emp: 9882 LEIGH
09:35 PM	APPLY PAYMENT	Visa on Table 63 Chk:30084 by 9882 LEIGH 46.42 Tip:0.00 ID:4491631021235627 Exp:1103
09:35 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:36 PM	LOG IN	Log In Emp: 9882 LEIGH
09:36 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 4 time(s)
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 50.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 10.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 1.00
09:36 PM	APPLY PAYMENT	Cash on Table 62 Chk:50036 by 9882 LEIGH 10.00
09:36 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 62 Chk:50036 Printed 2 time(s)
09:36 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 62 Chk:50036 for a total of 61.56
09:36 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:40 PM	LOG IN	Log In Emp: 9882 LEIGH
09:40 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:20047 Printed 1 time(s)
09:40 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:40 PM	LOG IN	Log In Emp: 9882 LEIGH
09:40 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:44 PM	LOG IN	Log In Emp: 9882 LEIGH
09:44 PM	APPLY PAYMENT	Visa on Table 53 Chk:20047 by 9882 LEIGH 42.37 Tip:0.00 ID:4773550000020827 Exp:1103
09:44 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:46 PM	LOG IN	Log In Emp: 9882 LEIGH
09:46 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 5 time(s)
09:46 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:49 PM	LOG IN	Log In Emp: 9882 LEIGH
09:49 PM	ADJUST PAYMENT	Visa on Table 53 Chk:20047 by 9882 LEIGH Amt:42.37 Tip:0.00 -> 2.63 ID:4773550000020827 Exp:1103
09:49 PM	ADJUST PAYMENT	Visa on Table 63 Chk:30084 by 9882 LEIGH



145 - Longhorn of Leominster  
227 North Main Street

# Audit Report

Date of Business: 09/26/2003

Page 11  
12/01/2003 -- 5:29 PM  
5.2 5.180

Time	Type	Transaction
		Amt:46.42 Tip:0.00 -> 7.00 ID:4491631021235627 Exp:1103
09:49 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 53 Chk:20047 Printed 2 time(s)
09:49 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 53 Chk:20047 for a total of 42.37
09:49 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 63 Chk:30084 Printed 2 time(s)
09:49 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 63 Chk:30084 for a total of 46.42
09:49 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.78 for Table 63 Chk:20052 1.89 Coke 1.89 Coke
09:49 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:52 PM	LOG IN	Log In Emp: 9882 LEIGH
09:53 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 3.49 for Table 53 Chk:40069 3.49 Heineken 0.00 MUG 0.00 Water
09:53 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:57 PM	LOG IN	Log In Emp: 9882 LEIGH
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH 100.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH 100.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH 20.00
09:57 PM	APPLY PAYMENT	Cash on Table 52 Chk:20043 by 9882 LEIGH 20.00
09:57 PM	PRINT CHECK	Emp: 9882 LEIGH printed Table 52 Chk:20043 Printed 6 time(s)
09:57 PM	CLOSE CHECK	Emp: 9882 LEIGH closed Table 52 Chk:20043 for a total of 202.79
09:58 PM	LOG OUT	Log Out Emp: 9882 LEIGH
09:58 PM	LOG IN	Log In Emp: 9882 LEIGH
09:58 PM	CLOSE CHECK	Emp: 9882 LEIGH Check Table 73 Chk:40070 was freed because it was empty.
09:58 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 6.59 for Table 53 Chk:40069 6.59 Fire Wrap
09:58 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:03 PM	LOG IN	Log In Emp: 9882 LEIGH
10:03 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 4.99 for Table 53 Chk:40069 4.99 Fried Cake
10:03 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:06 PM	LOG IN	Log In Emp: 9882 LEIGH
10:07 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 29.76 for Table 73 Chk:20054 1.89 Diet Coke 8.99 Sam Caes-D 0.00 With Hot 0.00 See Server 16.99 PR 16oz 0.00 Rare PR 0.00 Seasonal Veg 0.00 Caesar Salad 1.89 Tea
10:07 PM	LOG OUT	Log Out Emp: 9882 LEIGH
10:10 PM	LOG IN	Log In Emp: 9882 LEIGH
10:10 PM	ORDER ITEMS	Emp 9882 LEIGH ordered \$ 24.98 for Table 73 Chk:20054 12.49 Fried Dinner 0.00 FF 0.00 Slaw 12.49 Fried Dinner

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS )  
SHE IS THE ADMINISTRATRIX OF THE )  
ESTATE OF AWILDA SANTIAGO, ESSEX )  
PROBATE COURT DOCKET #03P-2499AD1, )  
P/P/A VERONICA ROSARIO AND )  
CHRISTINA SANTIAGO, AND AS )  
SHE IS THE ADMINISTRATRIX OF THE )  
ESTATE OF JOSE SANTIAGO, BERLIN )  
(CONNECTICUT) )  
PROBATE COURT, CASE #03-0713 )  
Plaintiff )

Civil Action #05-CV-10617MLW

v. )

RARE HOSPITALITY INTERNATIONAL, INC. )  
d/b/a LONGHORN STEAKHOUSE )  
Defendant )

**AFFIDAVIT OF JUDE CONNELLY**

1. My name is Jude Connelly, I am an adult and a resident of Harvard, Massachusetts.

2. I was part of a group of young men who were customers at the Longhorn Steakhouse in Leominster, Massachusetts on September 26, 2003.

3. Another member of that group was Jeffrey Southworth.

4. Over the course of the evening, I observed Mr. Southworth being served and drinking various alcoholic beverages. I have already testified at deposition concerning my observations of Mr. Southworth in the matter of Nancy Rosario, individually and as administratrix of the Estate of Awilda Santiago, et al v. Jeffrey Southworth, et al, Middlesex Superior Court C.A. #03-4704. Portions of my deposition are attached hereto as Exhibit A.

5. In my deposition at pages 49-51, I testified that during the course of the evening at the Longhorn Steakhouse, Mr. Southworth seemed to be under the influence of the alcoholic beverages he was being served at the restaurant.

6. I also testified, at pages 42-44 of my deposition, that approximately one half-hour before we left the Longhorn, everyone at the table was loud, including Mr. Southworth, and that either a waitress or a manager of the restaurant came to us and asked us to be quiet.

7. At that time, when the table was asked to quiet down, Mr. Southworth was exhibiting all the signs of intoxication I testified about at pages 49-51 of my deposition.

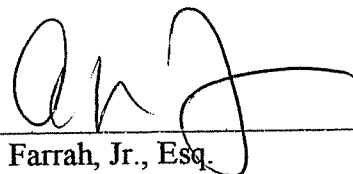
Signed under the pains and penalties of perjury this 6<sup>th</sup> day of May, 2005.

  
\_\_\_\_\_  
JUDE CONNELLY

CERTIFICATE OF SERVICE

SUFFOLK, SS

A copy of the Affidavit of Jude Connelly was today <sup>May 12 2005</sup> ~~mailed, postage prepaid~~ <sup>hand delivered 11:00 PM</sup> to Brian Voke, Esq., Campbell, Campbell, Edwards & Conroy, One Constitution Plaza, Boston, MA 02129.

  
\_\_\_\_\_  
Albert L. Farrah, Jr., Esq.

**Albert Farrah**

---

**From:** ECFnotice@mad.uscourts.gov  
**Sent:** Tuesday, August 01, 2006 4:48 PM  
**To:** CourtCopy@mad.uscourts.gov  
**Subject:** Activity in Case 1:05-cv-10617-MLW Rosario v. Rare Hospitality International, Inc. "Motion for Protective Order"

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

**United States District Court**

**District of Massachusetts**

Notice of Electronic Filing

The following transaction was received from Gillis, Michael K. entered on 8/1/2006 at 4:48 PM EDT and filed on 8/1/2006

**Case Name:** Rosario v. Rare Hospitality International, Inc.  
**Case Number:** 1:05-cv-10617  
**Filer:** Rare Hospitality International Inc.  
**Document Number:** 16

**Docket Text:**

MOTION for Protective Order *and Sanctions* by Rare Hospitality International Inc..(Gillis, Michael)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**yes

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1029851931 [Date=8/1/2006] [FileNumber=1521886-0]  
[d3af6e134da9366b02366dd2da73fe9220bf4d1ef9687456500afa664326edd17ca0  
26d7c53d44f69f51f182f95a7099933bd49f565d32ecca8fbefd9c5b41ed]]

**1:05-cv-10617 Notice will be electronically mailed to:**

David R. Bikofsky dbikofsky@gillisandbikofsky.com

Albert L. Farrah alf@corwinlaw.com

Michael K. Gillis mgillis@gillisandbikofsky.com

Neil D. Schnurbach nschnurbach@gillisandbikofsky.com

**1:05-cv-10617 Notice will not be electronically mailed to:**

8/15/2006



## Albert Farrah

---

**From:** Albert Farrah  
**Sent:** Tuesday, August 01, 2006 11:13 AM  
**To:** Michael Gillis (mgillis@gillisandbikofsky.com)

I have still not received your motion for a protective order regarding Mr. DiNatale, despite your repeated, months long claims that you intend to seek a protective order. Are you waiving your objections to his deposition? It certainly seems so. Please get back to me asap on this, or better yet, forward to me your motion and supporting papers.

Albert L. Farrah, Jr., Esq.  
One Washington Mall, 5th Floor  
Boston, MA 02108  
Phone: (617) 742-7766  
Fax: (617) 742-2331  
[alf@corwinlaw.com](mailto:alf@corwinlaw.com)  
[alf@afarrah.com](mailto:alf@afarrah.com)  
[www.afarrah.com](http://www.afarrah.com)

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## Albert Farrah

---

**From:** Albert Farrah  
**Sent:** Thursday, July 27, 2006 11:25 AM  
**To:** Michael Gillis (mgillis@gillisandbikofsky.com)

Thank you for accommodating me today. Since I won't be at your office, will you please fax and mail to me today your motion for a protective order re Di Natale. Also, what's your position regarding my motion to amend, and do you have good dates for Boullinne and Christina/Veronica?

I will be faxing to you tomorrow Nancy's additional medicals and will call you with an update of her condition as soon as I have some information for you.

Albert L. Farrah, Jr., Esq.  
One Washington Mall, 5th Floor  
Boston, MA 02108  
Phone: (617) 742-7766  
Fax: (617) 742-2331  
[alf@corwinlaw.com](mailto:alf@corwinlaw.com)  
[alf@afarrah.com](mailto:alf@afarrah.com)  
[www.afarrah.com](http://www.afarrah.com)

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ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

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(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)

[www.afarrah.com](http://www.afarrah.com)

July 20, 2006

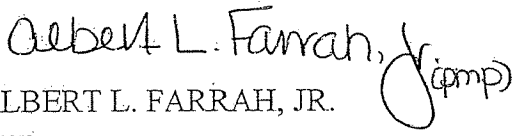
Michael Gillis, Esq.  
Gillis & Bikofsky, P.C.  
1150 Walnut Street  
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse  
United States District Court Docket #05-CV-10617MLW

Dear Michael:

I am still waiting for your motion for a protective order with regard to Mr. DiNatale. When can I expect to receive it? Thank you.

Sincerely,

  
ALBERT L. FARRAH, JR.  
pmp

FAX and REGULAR MAIL

cc: Nancy Rosario  
Louis J. Farrah, II, Esq.

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)

[www.afarrah.com](http://www.afarrah.com)

**FAX TRANSMITTAL COVER SHEET**

Date: July 20, 2006

To: Michael Gillis, Esq. (617-964-0862)  
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 2

Comments:

If you do not receive the correct number of pages, please call (617) 742-7766.

IMPORTANT NOTICE: THIS FAX (INCLUDING ALL ATTACHED PAGES) IS INTENDED ONLY FOR THE USE OF THE NAME ADDRESSEE(S) AND MAY CONTAIN INFORMATION THAT IS LEGALLY PRIVILEGED OR EXEMPT FROM DISCLOSURE. IF YOU ARE NOT A NAMED ADDRESSEE, YOU ARE HEREBY NOTIFIED THAT ANY USE, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS FAX IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE DESTROY ALL COPIES AND NOTIFY US IMMEDIATELY BY TELEPHONE. THANK YOU.



\* \* \* COMMUNICATION RESULT REPORT ( JUL. 20. 2006 11:18AM ) \* \* \*

TTI 617-742-2331

TRANSMITTED/STORED FILE MODE	JUL. 20. 2006 11:16AM OPTION	ADDRESS	RESULT	PAGE
2729 MEMORY TX		6179640862 19786823234	OK OK	2/2 2/2

REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWER

E-2) BUSY  
E-4) NO FACSIMILE CONNECTION

**ALBERT L. FARRAH, JR.****COUNSELOR AT LAW**

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)[www.afarrah.com](http://www.afarrah.com)**FAX TRANSMITTAL COVER SHEET**

Date: July 20, 2006

To: Michael Gillis, Esq. (617-964-0862)  
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 2

Comments:

If you do not receive the correct number of pages, please call (617) 742-7766.

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**GILLIS & BIKOFSKY, P.C.**

Attorneys At Law  
1150 Walnut Street  
Newton, Massachusetts 02461

Tel: (617) 244-4300  
Fax: (617) 964-0862

Michael K. Gillis  
David R. Bikofsky

Joseph C. Borsellino  
Christopher M. Dailey  
Rebecca L. Wilson  
Neil D. Schnurbach

June 30, 2006

**VIA FACSIMILE AND REGULAR MAIL**

Albert L. Farrah Jr., Esq.  
One Washington Mall, 5th Floor  
Boston, MA 02108

**RE: Nancy Rosario, et al,**  
**v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse**  
**C.A. No.: 05CV10617**

Dear Attorney Farrah:

In response to your letter of June 20, 2006, I would like to memorialize some points.

Firstly, as a reminder, I am still awaiting discovery responses from you, which were served upon you on February 14, 2006. In the past, I was forced to postpone the deposition of your client to give you sufficient time to respond to her interrogatories. If I do not receive these discovery responses by Friday, July 7, 2006 I will be forced to once again postpone your client's deposition. Despite your delay, in furnishing me with discovery responses, I will be furnishing you with such responses very shortly.

In terms of John DiNatale's deposition, Fed.R.Civ.P. 26(c) requires me to certify that I have in good faith conferred with you in order to resolve this discovery dispute absent a court order. I was awaiting response to my June 8, 2006 letter so that I could make such a representation to the Court. Since you have left me no choice, I will be filing this Motion for Protective order forthwith. If you would explain why you feel you are entitled to take Mr. DiNatale's deposition, perhaps we can resolve this dispute without having to go to court.

Lastly, on December 22, 2005, my office sent you responses to the Keeper of Records depositions we had received. We dispute the fact that there were a total of 82 such subpoenas, however, we will be sending your office further records of those responses shortly.

I would agree with your sentiment that these discovery matters should be resolved without having to go to court. I sincerely hope that you and your client will diligently

attempt to respond to the interrogatories propounded on February 14, over four and one half months after they were submitted to your attention.

Thank you for your courtesy and cooperation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael K. Gillis". The signature is fluid and cursive, with the first name "Michael" and last name "Gillis" clearly distinguishable.

Michael K. Gillis  
Neil D. Schnurbach

MKG:nhl

ALBERT L. FARRAH, JR.

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)

[www.afarrah.com](http://www.afarrah.com)

June 20, 2006

Michael Gillis, Esq.  
Gillis & Bikofsky, P.C.  
1150 Walnut Street  
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse  
United States District Court Docket #05-CV-10617MLW

Dear Michael:

we have several discovery matters that must be resolved. On January 27, 2006, plaintiff's request for production of documents was served on you. It is now 5 months later, and despite your repeated representations to me that you would furnish me the response to request for production of documents and responsive documents, I still have not received either. Is there some problem? Please get both the response and the documents to me immediately.

I have twice noticed the deposition of your investigator, Mr. DiNatale, and both times, based on your representations that you would seek a protective order, I have continued that deposition. On June 8, 2006, you wrote me a letter, a copy of which is enclosed, in which you represented you would file the motion for a protective order if I had not given you indications by June 12, 2006 that I was not going forward with his deposition. June 12, 2006 came and went, I gave you no such indications because I am intending to go forward with his deposition. Where is your motion for protective order?

Your predecessor and you served a total of 82 record keeper subpoenas. All have been returned. To date, I have received copies of very few of those records. We have spoken about this issue on numerous occasions in the past and I still have no sense of why you have not produced copies of all records you received.

I really want to resolve these issues without the need of moving in court. Please get back to me on all these matters immediately.

Santiago-RARE.ltr278



Sincerely,

Albert L. Farrah (pmp)

ALBERT L. FARRAH, JR.

pmp

FAX ONLY

cc: Nancy Rosario

Louis J. Farrah, II, Esq.

Dictated, but not read.

**ALBERT L. FARRAH, JR.**

COUNSELOR AT LAW

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)

[www.afarrah.com](http://www.afarrah.com)

**FAX TRANSMITTAL COVER SHEET**

Date: June 20, 2006

To: Michael Gillis, Esq. (617-964-0862)  
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 3

Comments:

If you do not receive the correct number of pages, please call (617) 742-7766.

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\* \* \* COMMUNICATION RESULT REPORT ( JUN. 20. 2006 12:06PM ) \* \* \*

TTI 617-742-2331

TRANSMITTED/STORED JUN. 20, 2006 12:04PM  
FILE MODE OPTION

ADDRESS

RESULT

PAGE

1791 MEMORY TX

6179640862  
19786823234OK  
OK3/3  
3/3REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-3) NO ANSWERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION**ALBERT L. FARRAH, JR.****COUNSELOR AT LAW**

One Washington Mall • Boston, MA 02108

(617) 742-7766 • Fax: (617) 742-2331

[alf@afarrah.com](mailto:alf@afarrah.com)[www.afarrah.com](http://www.afarrah.com)**FAX TRANSMITTAL COVER SHEET**

Date: June 20, 2006

To: Michael Gillis, Esq. (617-964-0862)  
Louis J. Farrah, II, Esq. (1-978-682-3234)

From: Albert L. Farrah, Jr., Esq.

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc.

Pages (including cover sheet): 3

Comments:

If you do not receive the correct number of pages, please call (617) 742-7766.

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**GILLIS & BIKOFSKY, P.C.**

Attorneys At Law  
1150 Walnut Street  
Newton, Massachusetts 02461

Tel: (617) 244-4300  
Fax: (617) 964-0862

Michael K. Gillis  
David R. Bikofsky

Joseph C. Borsellino  
Christopher M. Dailey  
Rebecca L. Wilson  
Neil D. Schnurbach

June 8, 2006

**VIA FACSIMILE AND REGULAR MAIL**

Albert L. Farrah Jr., Esq.  
One Washington Mall, 5th Floor  
Boston, MA 02108

**RE: Nancy Rosario, et al,**  
**v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse**  
**C.A. No.: 05CV10617**

Dear Attorney Farrah:

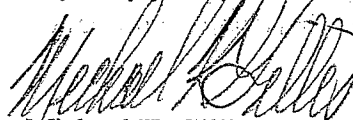
As you know, we oppose your effort to depose John DiNitale. When we spoke, I asked you your reasons for taking his deposition, and your response was that I could object but you still "wanted a shot at him".

As of this date, you have not articulated a right or a reason for deposing our investigator. Your request is well outside the bounds of the Federal Rules, in fact, it flies in the face of precedent in this Court. To require us to seek a protective order is inexcusable.

I will hold off until the end of business on Monday, June 12, 2006, to receive a letter from you stating that you are not going forward with Mr. DiNitale's deposition. If I do not receive the letter, I will have no choice but to file a motion for a protective order. Since you have not articulated any legitimate or recognizable need for the deposition, I will be seeking attorneys' fees and costs associated with the motion.

Thank you for your courtesy and cooperation.

Very truly yours,



Michael K. Gillis

MKG:jal



**GILLIS & BIKOFSKY, P.C.**

Attorneys At Law  
1150 Walnut Street  
Newton, Massachusetts 02461

Tel: (617) 244-4300  
Fax: (617) 964-0862

Michael K. Gillis  
David R. Bikofsky

Joseph C. Borsellino  
Christopher M. Dailey  
Rebecca L. Wilson  
Neil D. Schnurbach

Albert L. Farrah Jr., Esq.  
One Washington Mall, 5th Floor  
Boston, MA 02108

June 2, 2006

**RE: Nancy Rosario, Individually, as Administratrix of the Estate of Awilda  
Santiago, as Administratrix of the Estate of Jose Santiago, as Mother and  
Next Friend of Veronica Rosario, A Minor, and Christina Santiago, A Minor.  
v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse  
C.A. No.: 05CV10617**

**VIA FACSIMILE AND REGULAR MAIL**

Dear Attorney Farrah:

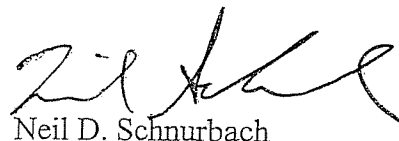
This letter is to confirm that as per our conversation of Thursday, June 1, 2006, the deposition of John DiNatale scheduled for Monday, June 5, 2006 will be postponed until a later date to give our office an opportunity to file a Motion for a Protective Order.

The deposition of William "Todd" Currie also scheduled for Monday, June 5, 2006 will go forward as planned.

If you have any questions, please feel free to contact my office.

Thank you for your courtesy and cooperation.

Very truly yours,



Neil D. Schnurbach

NDS:nhl

ALBERT L. FARRAH, JR.

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May 2, 2006


Michael Gillis, Esq.  
Gillis & Bikofsky, P.C.  
1150 Walnut Street  
Newton Highlands, MA 02461

RE: Nancy Rosario, et al v. RARE Hospitality International, Inc. d/b/a Longhorn Steakhouse  
United States District Court Docket #05-CV-10617MLW

Dear Michael:

I forwarded to you last week a Notice of Taking Deposition of John DiNatale. Pursuant to the agreement I reached with Neil Schnurbach of your office, my office will not be required to subpoena Mr. DiNatale and you will file a motion for protective order which I will oppose. Furthermore, if that motion is denied I will not need to subpoena Mr. DiNatale. Thank you for your consideration in this matter.

Sincerely,

Albert L. Farrah, Jr. 

ALBERT L. FARRAH, JR.  
pmp

cc: Nancy Rosario  
Louis J. Farrah, II, Esq.